

Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

Complainant: Brad Avakian, Commissioner of the Bureau of Labor and Industries

Respondents: State of Oregon, Legislative Assembly

State of Oregon, Legislative Administration Committee

Aider/Abettor: Jeff Kruse

DATE ISSUED

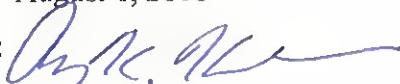
Case Number: STEM SHI 180801-11138

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Investigators: Rosalia Radich, Brittney Boggs

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CIVIL RIGHTS DIVISION

Reviewed By: 

I.	Jurisdiction.....	I
II.	Synopsis.....	2
III.	Claim and Answer.....	2
IV.	Identity of Respondents	3
V.	Aider or Abettor.....	4
VI.	Findings of Fact	4
	BACKGROUND	4
	RESPONDENTS' INVESTIGATOR AND STUDENTS A & B - DISCREPANCIES	11
	POWER DIFFERENTIALS	16
	INTERMEDIARIES	18
	RESPONDENTS KNEW OR SHOULD HAVE KNOWN	20
	FAILURE TO TAKE IMMEDIATE & APPROPRIATE CORRECTIVE ACTION OR TO EXERCISE REASONABLE CARE TO PREVENT OR PROMPTLY CORRECT HARASSING BEHAVIOR	24
	PROCESS AND POTENTIAL CHILLING EFFECTS	28
	RETALIATION CONCERNS.....	34
VII.	Summary	42
VIII.	Determination.....	52

I. Jurisdiction

Oregon Revised Statutes chapter 659A, ORS 25.337, 25.424, 171.120, 345.240, 441.184, 476.576, 651.060, 651.120, 652.355, 653.060 and 654.062, and Oregon Administrative Rules chapter 839 divisions 2, 3, 4, 5, 6, 9 and 10 authorize the Civil Rights Division to accept, investigate, amend, resolve and determine complaints alleging unlawful practices in employment, housing, places of public accommodation, state government and career, professional and trade schools.

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

Specific facts supporting a conclusion that the Division has jurisdiction over Respondents are found below.

II. Synopsis

The Bureau of Labor and Industries (BOLI), Civil Rights Division, finds substantial evidence of unlawful practices of discrimination based on sex, in that Respondents subjected multiple individuals to a workplace where submission to unwelcome and offensive conduct of a sexual nature was made a term or condition of employment, in violation of ORS 659A.030(1)(b) and OAR 839-005-0030.

The Bureau of Labor and Industries (BOLI), Civil Rights Division, finds substantial evidence of unlawful practices of discrimination based on sex, in that Respondents subjected multiple individuals to a workplace with unwelcome verbal or physical conduct sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment, in violation of ORS 659A.030(1)(b) and OAR 839-005-0030.

The Bureau of Labor and Industries (BOLI), Civil Rights Division, finds substantial evidence of unlawful employment practices based on sex in that Respondent Jeff Kruse aided or abetted Respondents' discrimination in terms and conditions of employment and in creating a hostile, intimidating or offensive working environment, in violation of ORS 659A.030 (1)(g) and OAR 839-005-0030.

The Bureau of Labor and Industries (BOLI), Civil Rights Division, finds substantial evidence that Respondents knew or should have known of, but failed to take immediate and appropriate corrective action to the unlawful employment practices based on sex and/or failed to exercise reasonable care to prevent and promptly correct any sexually harassing behavior, in violation of OAR 839-005-0030.

The Bureau of Labor and Industries (BOLI), Civil Rights Division, finds substantial evidence of unlawful practices by Respondents based on sex (denial of full and equal accommodations, advantages, facilities and privileges of the Capitol, a place of public accommodation, without discrimination) in violation of ORS 659A.403.

The Bureau of Labor and Industries (BOLI), Civil Rights Division, finds substantial evidence of unlawful practices based on sex (aiding or abetting denial of full and equal accommodations, advantages, facilities and privileges of the Capitol, a place of public accommodation, without discrimination) by Jeff Kruse, in violation of ORS 659A.406.

III. Claim and Answer

On August 1, 2018, Commissioner Brad Avakian ("Complainant") filed a complaint with the Civil Rights Division under ORS 659A.825. Complainant alleged that Respondents

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Civil Rights Division - Bureau of Labor and Industries NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

have subjected legislators, employees, lobbyists and student interns to a hostile work environment based on sex, including but not limited to unlawful sexual harassment by former Senator Jeff Kruse; that Respondents have denied multiple individuals full and equal accommodations, advantages, facilities and privileges of the Capitol based on their sex; and that former Senator Jeff Kruse aided or abetted Respondents in these unlawful practices. Complainant alleges that this constitutes a violation of ORS 659A.030(1)(b) and ORS 659A.403.

Respondents deny that they have ever subjected anyone to a hostile work environment or denied full and equal accommodations, advantages, facilities or privileges to any individual. Respondents state they took proactive steps to discipline Senator Kruse to the maximum extent the Oregon Constitution allows any individual member or legislative staff to take¹. Respondents state that in all four instances of harassment identified in the Commissioner's Complaint, Respondents took immediate action to investigate allegations and act. Respondents state that, prior to 2016, they had no knowledge of Senator Kruse's inappropriate workplace behavior. Respondents dispute the accuracy of many of the allegations in the Commissioner's Complaint, and Respondents contend that BOLI does not have the authority to investigate complaints of unlawful practices by Respondents.

Respondents also express concern that requiring Respondents to disclose to BOLI information² about individuals involved in allegations of harassment would be "contrary to the purported goals stated in the Commissioner's Complaint."³ BOLI shares similar concerns, and obtained a protective order to shield personal identifying information of certain individuals from public disclosure.

IV. Identity of Respondents

1. Respondent State of Oregon, Legislative Assembly, is a public body as defined in ORS 30.260 and 174.109, and is a person pursuant to ORS 659A.001(9).
2. Respondent State of Oregon, Legislative Administration Committee, is a committee of the Legislative Assembly, and is a public body as defined in ORS 30.260 and 174.109, and is a person pursuant to ORS 659A.001(9).
3. Respondent Jeff Kruse was a member of the Legislative Assembly at times relevant to this complaint, and is a person pursuant to ORS 659A.001(9).

¹ Article IV, Section 15 of the Oregon Constitution states that either house may punish its members for disorderly behavior, and may with the concurrence of two thirds, expel a member.

² Respondents and BOLI are both public bodies as defined by Oregon Public Records Law, ORS 192.311.

³ The Commissioner's Complaint states that the allegations therein are made "in order to protect the interests of individuals in proximity to others who hold unique positions of power, and to ensure that the public's interest in this and similar matters is protected."

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

V. Aider or Abettor

1. Respondent Jeff Kruse aided or abetted actions of the other Respondents in all of the unlawful practices based on sex. ORS 659A.406.

VI. Findings of Fact

1. Respondents Legislative Assembly and Legislative Administration Committee employ one or more persons in the State of Oregon and are an employer pursuant to ORS 659A.001(4)(a).
2. Respondents Legislative Assembly and Legislative Administration Committee operate the Oregon State Capitol (“Capitol”), a place of public accommodation as defined by ORS 659A.400.
3. Respondent and Aider or Abettor Jeff Kruse was a member of the Legislative Assembly at times relevant to this complaint, and is a person pursuant to ORS 659A.001(9).
4. Complainant Brad Avakian is the Commissioner of the Bureau of Labor and Industries, and filed this complaint on August 1, 2018, pursuant to ORS 659A.825.

BACKGROUND

5. On or about October 16, 2017, Senator Sara Gelser published a social media posting (via Twitter) responding to another posting regarding the sources of donations. Senator Gelser wrote: “I have no \$ from HW. Will u ensure that no member of ur caucus inappropriately touches or gropes female members and staff in Cap?”
6. In November, 2017, Senator Gelser and Senator Elizabeth Steiner Hayward each filed complaints under Respondents’ “formal complaint process” as set forth in Respondents’ Legislative Branch Personnel Rule (LBPR) 27, alleging harassment by Senator Jeff Kruse.
7. On or about November 27, 2017, Respondents retained attorney Dian Rubanoff to conduct an investigation of the complaints filed by Senators Gelser and Steiner Hayward.
8. Commissioner Avakian states that on December 12, 2017, he and BOLI Deputy Commissioner Christie Hammond met with President Peter Courtney and Speaker Tina Kotek and their staff and Legislative Counsel Dexter Johnson, in the Speaker’s Capitol office to discuss the hostile environment that existed at the Capitol. Commissioner Avakian states that in that meeting, he advised the

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

President and Speaker that he had already been contacted by affected women in the Capitol and believed it was very possible that either a complaint would be filed with BOLI or the women would ask that he file a Commissioner's Complaint on their behalf. Commissioner Avakian states that he fully explained the Bureau's process of investigating and prosecuting complaints, and that he also provided some examples of potential remedies that could be considered that he believed might satisfy victims and avoid the need for formal complaints to be filed. Commissioner Avakian states that he also informed the President and Speaker that BOLI had reviewed the Respondents' personnel policies, and would be pleased to assist them in developing policies consistent with the law.

9. On or about February 2, 2018, Respondents released Dian Rubanoff's Final Investigation Report Regarding Complaints Against Senator Jeff Kruse. That report included information indicating that Senator Kruse had sexually harassed individuals other than the Senators, including two law students and a lobbyist.
10. Ms. Rubanoff's Final Investigation Report Regarding Complaints Against Senator Jeff Kruse included the following information:

The Governor's Office is located in the State Capitol. A lobbyist attended a photo shoot for a bill signing by the Governor in September 2017 in the Governor's Ceremonial Office. The photographer asked people to go behind the Governor's desk so that he could get them situated for the photograph.

"While that was occurring, the lobbyist was standing in the middle of the room. She felt someone come up behind her and 'cup' her buttocks with a hand, and she turned around and saw that it was Senator Kruse. I asked her to explain what she meant by 'cupping' her buttocks. She described that his open palm was facing her against her butt cheek, and his fingers were pointing down and curved under her butt. She said it was not a squeeze, but an upward motion of his hand. Senator Kruse was standing behind her a little bit to her right. She has no idea why he was standing there."

"She told me that she looked directly at him and he looked directly back at her. He did not move his hand, or say 'I'm sorry,' or acknowledge it in any way as being an accident. His fingers were still cupped under her buttocks as she backed away. He said nothing, and neither did she. She went and stood behind the desk with the other people, and at that point the Governor came into the room to join them for the photograph."

11. Commissioner Avakian states that on February 7, 2018, he had a phone conversation with Speaker Kotek to discuss the legislature's sexual harassment investigation and his February 5 text to her offering to provide a list of remedies to consider. Commissioner Avakian states that in this conversation he again

Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

voiced his concern that if the legislature did not address the needs of those who had already been harmed, rather than just make future policy changes, he believed it was likely a complaint would be filed necessitating a BOLI investigation.

Commissioner Avakian states that he recommended that at the very least, compensation should be provided to the victims and the statute of limitation to file a harassment complaint should be extended. Commissioner Avakian states that the Speaker did not comment on these suggestions.

12. On March 26, 2018, responding to BOLI's concern that the statute of limitation for complainants should be extended, Legislative Counsel Johnson, on behalf of the legislature responded "I certainly understand and share Commissioner Avakian's concerns that persons who may have suffered harm while working or volunteering at the Capitol have an effective remedy for addressing these injuries. Because there is a one year statute of limitation both in legislative rule and law, it is important that those who feel they have encountered... harassment... at the Capitol act promptly...."
13. Commissioner Avakian states that on March 27, 2018, he wrote to President Courtney and Speaker Kotek expressing concern that some victims might forego filing a BOLI or court complaint in hopes that the Oregon Law Commission⁴ and legislature would deliver an adequate resolution to the harassment they had experienced, but that the 2019 timeline for legislative action might be beyond the statute of limitation for the victims, and that he again suggested extending the statute of limitation.
14. Commissioner Avakian states that on April 10, 2018, President Courtney's Chief of Staff Betsy Imholt contacted Deputy Commissioner Christie Hammond in response to the Commissioner's March 27 letter to President Courtney and Speaker Kotek in which Imholt acknowledged BOLI's express concern about recourse options for individuals who had suffered from either a specific discrimination/harassment incident or a hostile environment at the Capitol.
15. On April 17, 2018, President Courtney and Speaker Kotek responded to the Commissioner's March 27 letter stating that the Oregon Law Commission recommendation "...if adopted by the legislature, will be *prospective only*. This

⁴ On or about April 16, 2018, the Office of the Legislative Administrator and the Oregon Law Commission signed a memorandum of understanding to enlist the assistance of the Oregon Law Commission in part to "[r]eview laws and rules that govern harassment among members and employees of the Legislative Assembly, lobbyists and members of the public, that provide complaint processes and procedures and that protect persons who file complaints from retaliation; Make recommendations for adding to, amending or otherwise improving the adequacy, clarity, effectiveness, timeliness and other relevant aspects of the constitutional provisions, statutes, rules, policies and procedures that govern the Legislative Assembly's ability to prevent and respond to workplace harassment," and to "Make any other recommendations that in the Commission's professional judgment, or the professional judgment of the Commission's subcontractor, will better enable the Legislative Assembly to create and maintain a workplace that is free of harassment."

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

review does not infringe on the right of claimants to seek recourse under the current law.” (Emphasis added.) The President and Speaker stated they would welcome a discussion on how to address “harms possibly already caused.”

16. On April 25, 2018, BOLI Deputy Commissioner Christie Hammond wrote to Legislative Counsel Johnson again stating the agency’s belief that the legislature should have reached out and taken greater measures with regard to people who had been harmed and offering BOLI’s assistance in crafting remedies for victims.
17. Commissioner Avakian states that on or about April, 2018, he had another phone conversation with Speaker Kotek and explained his concern that either an individual BOLI complaint or a Commissioner’s Complaint was likely. Commissioner Avakian states that he recited to the Speaker a list of nine recommendations that might serve to avoid a BOLI complaint and investigation.
18. On May 10, 2018, BOLI representatives met with attorney Dian Rubanoff, Respondents’ Legislative Counsel Johnson, and Deputy Legislative Counsel Jessica Santiago.
19. On May 15, 2018, BOLI asked Respondents to forward a letter from Commissioner Avakian to the law students and the lobbyist whom the Final Investigation Report stated had been harassed by Senator Kruse. Respondents initially agreed to do so, but later refused to forward the letter. The Commissioner ultimately had to seek the assistance of the students’ educational institution to convey his letter to the students.
20. On July 11, 2018, BOLI conducted interviews with the law students referenced in the complaint (“Student A” and “Student B”).
21. On July 19, 2018, BOLI interviewed the individual identified in the complaint as “Employee A”.
22. On July 20, 2018, BOLI interviewed the individual identified in the complaint as “Employee B”.
23. The Commissioner filed his complaint with the BOLI Civil Rights Division on August 1, 2018.
24. At the time the complaint was filed⁵, BOLI issued subpoenas to Respondents seeking information including, but not limited to, the following:

⁵ As a public body, Respondents are subject to a records retention schedule that may allow the destruction of documents after a certain period of time, depending on the nature of the document.

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

- a. Copies of all documents pertaining to all interviews conducted in the course of investigating reports made by Senator Sara Gelser and Senator Elizabeth Steiner Hayward alleging harassment by Senator Jeff Kruse, including but not limited to all interviews conducted by Dexter Johnson, Lore Christopher⁶, Aimee Steketee⁷, Jessica Santiago, or Dian Rubanoff.
 - b. Copies of all documents pertaining to reports or allegations of harassment involving legislators, employees, student interns or lobbyists, and events occurring at any time during the period from January 1, 2011, to present.
 - c. Copies of all personnel rules pertaining to harassment and in effect during the period from January 1, 2011, to present, and copies of all draft personnel rules pertaining to harassment and proposed for consideration at any time during the period from January 1, 2011, to present.
 - d. Copies of all documents pertaining to the designation of any person as an "intermediary" pursuant to Legislative Branch Personnel Rule 27 at any time during the period from January 1, 2011, to present, including but not limited to all documents related to and resulting from the events precipitating each designation.
 - e. Copies of all documents identifying the processes in effect during the period from January 1, 2011, to present, for documenting the receipt and resolution of informal reports of harassment.
 - f. Copies of all documents relating to the resolution of any alleged harassment at any time during the period from January 1, 2011, to present, including but not limited to both formal and informal settlement agreements.
 - g. Copies of all documents related to policies and procedures for the placement of student interns at the Oregon Legislature at any time during the period from January 1, 2011, to present.
 - h. Copies of documents sufficient to identify the names and most-recent contact information for any student interns working at the Oregon Legislature at any time during the period from January 1, 2011, to present.
25. Respondents submitted a written position statement in answer to this complaint. Respondents argued that BOLI did not have jurisdiction to investigate this

⁶ Respondents' Employee Services Manager

⁷ Human Resources Analyst 2, employed by Respondents

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Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

complaint⁸, and in the alternative, disputed the accuracy of the allegations and denied any unlawful practices.

26. The Commissioner's Complaint alleged that in 2015, Employee A reported to Respondents that she had recently learned that a male legislative intern at the Capitol who, prior to their time in the Capitol, had sexually assaulted her, had also sexually assaulted one of her acquaintances; that Employee A further reported that, while in the Capitol, the alleged harasser had asked her to describe her current sexual relationship with another person; that Legislative Counsel Johnson met with Employee A and presented her with investigative findings and recommendations that Employee A "should be cautioned about talking with anyone regarding this complaint...as additional conversation or actions outside of the investigation could be construed as retaliatory," and that Mr. Johnson also stated to Employee A that if she talked about her claims, it could be seen as defamation.
27. Respondents admit that Employee A was "cautioned against talking with anyone regarding the complaint, investigation, or recommendations, because such additional conversation or action outside of the investigation could be construed as retaliatory." Respondents stated "This was not a directive or a requirement to remain silent, nor was it for any nefarious purpose." Respondents further stated:

"One additional footnote needs to be provided concerning this statement (Commissioner's Complaint allegation 8.8.). In the late fall of 2017, there was considerable media attention concerning the allegations about Senator Kruse, and that attention included the release of records required to be released under Oregon public records law and one newspaper article about the allegations made by Employee A. That newspaper article prompted Johnson to visit the legislator Employee A had recently worked for, principally to explain the circumstances of the investigation Employee A had requested in 2015. As part of that conversation, Johnson explained that a report by Employee A that was (1) published in the media, (2) that identified the intern, and (3) that identified another individual as a victim of a sexual assault when that individual had never come forward, and Employee A had no personal knowledge of the alleged assault could lead to liability for defamation. Johnson noted in that conversation that the caution concerning liability only applied to allegations for which Employee A had no personal knowledge and did not apply to allegations

⁸ Respondents reiterated this argument in court in an attempt to avoid compliance with BOLI's subpoenas, but the court ordered Respondents to comply, and on December 4, 2018, the Oregon Court of Appeals denied Respondents motion to stay that order. Respondents did not raise this argument in an unrelated complaint that was filed on April 10, 2017, case number AGEMAG170308-40255. In that case, the Oregon Department of Justice submitted a position statement on behalf of the Oregon State Legislature, but did not argue that BOLI lacked jurisdiction to investigate the matter.

Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

involving Employee A personally. Employee A was not present for this conversation.”

Respondents did not explain why Mr. Johnson felt the need to caution a third-party about potential liability for defamation *after* the relevant information had already been published.

28. The Commissioner’s Complaint alleged that in 2015, Employee B made a report to Legislative Counsel Dexter Johnson and Betsy Inholt (Senate President Courtney’s Chief of Staff) about the conduct of President Courtney’s Communications Director (Robin Maxey); that Employee B reported Mr. Maxey had offered to buy her a beer at an event, and had stood so close as to be touching the side of his body with hers; that she declined his offer of a beer and moved across the bar, but Mr. Maxey followed her and repeated the same unwelcome conduct, which Employee B continued to decline; and that Employee B reported that in the following days, Mr. Maxey sent Employee B the lyrics to a song that she considered to be sexually lewd via Facebook message.
29. Respondents answer that they “do not deny the nature of Employee B’s complaint to Johnson and Imholt.”
30. The Commissioner’s Complaint further alleges that Legislative Counsel Johnson told Employee B that he was brokering an informal settlement between Employee B and Mr. Maxey, that she was not allowed to have contact with Mr. Maxey, and that she should not talk about her complaint to anyone.
31. Respondents deny the allegations made in this item of the Commissioner’s Complaint, stating:

“Johnson did not broker a settlement, and there was no settlement. Johnson did not tell Employee B to not have contact with the Director. It was Employee B’s desire to limit personal contact. The Director was, however, instructed to not have any personal contact with Employee B. Johnson did not tell Employee B that she should not talk about her complaint to anyone. However, Christopher did advise Employee B that if this matter was resolved to her satisfaction, it would be professional best practice to let the issue be resolved and not give it life through continued discussion in the workplace. It is common practice for Human Resource advisors to counsel employees on how to move forward beyond workplace conflicts and continue to engage constructively with co-workers and others with whom they must interact.”

32. The Commissioner’s Complaint alleged that in November 2016, Student A was working in Senator Kruse’s office and was subjected to unwelcome conduct of a

Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

sexual nature by Senator Kruse, including but not limited to calling her “little girl” and “sexy,” and saying her husband was really lucky; placing his hands on her thighs despite her telling him to stop, and subjecting her to sexual banter.

33. Respondents answer that they “do not deny the nature of Student A’s complaint against Senator Kruse to the extent reflected in Rubanoff’s report.”
34. The Commissioner’s Complaint alleged that from January through April 2017, Student B worked in Senator Kruse’s office and was subjected to unwelcome conduct of a sexual nature by Senator Kruse, including but not limited to asking about her sex life, wrapping his arms around her and sliding his arms cross-wise down the front of her body across her breasts, touching her hips, hugging her and squeezing tightly, putting his hands on her shoulders and talking to her nose-to-nose, and subjecting her to sexual banter.
35. Respondents answer that they “do not deny the nature of Student B’s complaint against Senator Kruse to the extent reflected in Rubanoff’s report.”
36. The Comissioner’s Complaint alleged that Legislative Counsel’s office subsequently called Student B to inform her of the possibility that her identity might be made public in response to a records request, because of the statements she had given in the course of the investigation into Senator Kruse’s conduct, and that in that call, the Legislative Counsel’s office told Student B that her career would be over.
37. Respondents deny Commissioner Avakian’s assertion that Legislative Counsel told Student B that her career would be over or made any comment suggesting anything of that nature.

RESPONDENTS’ INVESTIGATOR AND STUDENTS A & B - DISCREPANCIES

38. The Commissioner’s complaint alleges that in the course of investigating claims of sexual harassment made by Senator Gelser, attorney Dian Rubanoff interviewed two students (“Student A” and “Student B”) who had worked in proximity to Senator Kruse. The complaint alleges that Ms. Rubanoff told the students that there was no legal definition for their status and there was no way for them to file a suit against Respondents.
39. In a written declaration submitted with Respondents’ position statement, Ms. Rubanoff made statements including the following:

“At the beginning of my interview with [Student B], I referred to her as an ‘intern.’ She corrected me and stated that she was actually an ‘extern’ when she worked for the Legislature. I asked her to explain the difference

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Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

between an intern and an extern, and she told me that an extern is unpaid and receives class credits. I told her that Personnel Rule 27 expressly defined ‘employees’ to include interns, and that I didn’t know whether it included ‘externs.’ That was the extent of the discussion regarding her status under Personnel Rule 27, and there was no discussion about her legal status under the law.”

“I do not believe that the subject ever came up with ‘Student A’ regarding her status as an intern or extern. If it did come up, and if she had stated that she was an extern, I would have told her the same thing as the other student, i.e. that I didn’t know if Personnel Rule 27 applied to externs. . . . I had no discussion whatsoever with her, at any time, regarding her legal rights under state or federal employment laws, or whether she could make an administrative complaint with a state or federal agency, or whether she could file a lawsuit.”

40. Respondents provided a copy of Ms. Rubanoff’s notes from an interview with Student B. Those notes include the statement: “She was an extern, which means she got course credit for her time at the Legislature.” There is nothing in those notes indicating that Ms. Rubanoff first referred to Student B as an intern and was subsequently corrected. Elsewhere in the notes, there is a reference to Student A as “another *intern*.” The notes indicate that Ms. Rubanoff asked Student B about her thought process in believing she could not tell Senator Kruse to stop his conduct. Documenting Student B’s response, Ms. Rubanoff’s notes consist of the following: “Because he was a Senator and she was an *intern*. *As interns* they did not have any protections – he has all the power.” (Emphases added.)
41. At interview with BOLI, Student B answered questions about Ms. Rubanoff as follows:

BOLI: Have you read or heard any of Ms. Rubanoff’s public statements regarding the complaint?

STUDENT B: I have heard her deny telling the other intern and I that she gave us any information about complaints.

BOLI: Okay. And so when you met with Ms. Rubanoff, was there any discussion of the difference between interns and externs?

STUDENT B: So we never met in person. We always did our interviews over the phone. And there was many, many, many phone calls over the course of her investigation. And the first time she talked about whether or not I had any standing to file a complaint with the Legislature it was discussing my legal status as an extern or intern. I don’t know. We, like, discussed the difference between those two because her way of wording it was, You’re not getting paid to be here, so you’re not an employee, and you don’t have standing to file a formal complaint. She said very clearly, If this goes to trial, you will be a witness, not a complainant.

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

BOLI: Okay. And along those lines, just to confirm a couple things from our notes from your previous interview. Our notes indicate that you stated Ms. Rubanoff said, Because you were an intern, you had no rights against Kruse and could not file a complaint because the rules only protect paid employees?

STUDENT B: Yes.

BOLI: Is that an accurate summary?

STUDENT B: Yes, that's what she said on multiple phone calls.

BOLI: Okay.

STUDENT B: She - and she – the first time it was more of a matter of fact, Here's how this goes, just kind of letting you know my role in the investigation was not as somebody going to be suing the Legislature. I was just a witness. I couldn't even sue the Legislature. Just letting me know about that. Later on in the process on another phone call I remember her expressing sympathy that I couldn't sue the Legislature because I was an unpaid staff. And she felt, you know, sympathy or sorrow or sadness that I couldn't -- that I didn't have a course of [indiscernible] for what happened to me. She did express sympathy that I was assaulted by Kruse. But then again reiterated I couldn't file a complaint.

42. At interview with BOLI, Student A answered questions about Ms. Rubanoff as follows:

BOLI: Have you heard or read any of Ms. Rubanoff's public statements regarding the complaint?

STUDENT A: I think I read -- she had a press release or something that just said, you know, That's not what I said. But I don't remember anything specific that I read.

BOLI: Do you know if you generally agreed with her statements?

STUDENT A: With her statements that she never told us that we didn't -- couldn't sue? No, I don't agree with that.

...

BOLI: So our notes from your previous interview indicated that you had stated Ms. Rubanoff said that she did not see any way for you to file a suit because you were not technically an employee. And that she said, I do not know how to characterize you and a way to identify you. Is that an accurate?

STUDENT A: Yes.

43. At interview with BOLI, Ms. Rubanoff answered questions about her interactions with Student A and Student B as follows:

BOLI: You signed a declaration on August 30th, 2018. In that declaration you stated that in your conversations with STUDENT B you referred to her as an intern, but she corrected you and said that she was actually an extern. You stated that you asked STUDENT B to explain the difference

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

between an extern -- an intern and an extern, and she told you that an extern is unpaid and received class credits. I haven't been able to find that exchange reflected in your notes for that interview. How are you able to recall that detail?

MS. RUBANOFF: Well, it is in my notes.

BOLI: Okay. So...

MS. RUBANOFF: It is in my notes that she told me that she was an extern. She was an extern, which means she got course credit for her time at the Legislature. I didn't write down the entire exchange.

BOLI: So your notes say she was an extern, but it doesn't talk about her correcting you. You calling her an intern and her correcting you.

MS. RUBANOFF: That was the conversation. I specifically remember the conversation.

BOLI: Okay. Did you believe that those factors, being unpaid and receiving class credits, were inconsistent with the statutory definition of an intern?

MS. RUBANOFF: Well, I wasn't looking at the statutory. It had nothing to do with the statutory definition of an intern.

BOLI: Okay.

MS. RUBANOFF: To the extent there was any discussion about what it means to be an intern it was under the personnel rule, which I had sitting on the table --

BOLI: Okay.

MS. RUBANOFF: -- during my interview with her.

BOLI: Did the personnel rule have a definition of an intern?

MS. RUBANOFF: No. That was the point. But I don't believe that discussion happened during the main part of the interview to the extent there was any kind of a discussion about that. Well, go ahead and ask your questions, and if I feel like I need to elaborate I will.

BOLI: Sure, yeah. And it's -- on that point, in your declaration you say, I told STUDENT B that personnel rule 27 expressly defined employees to include interns and that I didn't know whether it included externs. And the question is how are you able to recall that detail.

MS. RUBANOFF: Because I recall that there was a discussion about the difference between interns and externs. And, like I say, I had the rule in front of me. And I don't remember at what points in the conversation that came up. It was only relevant from the standpoint of whether she was somebody who was covered by the rule and whether we would be allowed to include her information in the investigation report.

BOLI: Okay. Was she at any point asking about her legal status?

MS. RUBANOFF: Absolutely not.

BOLI: Okay.

MS. RUBANOFF: Absolutely not.

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

BOLI: So how did you get from at the outset you referring to her as an intern. She corrects you and says she's an extern. How does that lead into a discussion of whether or not she's covered under the rule?

MS. RUBANOFF: Because there were concerns about what her role was going to be and whether her information was going to be disclosed. And I didn't even know that we were going to be allowed to include her information in the report, which I may have said to her that, you know, I -- you know, we don't even know that we're going to be able to use your information. I knew I intended to put it in the draft. But after the draft, then Senator Kruse's supporters/attorney had an opportunity to complain about whatever they wanted -- object to whatever they wanted to in the draft report. And we anticipated that there was going to be an objection about -- including conduct that was directed toward other people. And in fact if you have a copy -- you should have a copy of Jill Gibson's objections to my draft report. And in fact she says right in the beginning that it shouldn't be including things that were filed by people who were not complainants. So they were fine with there being witnesses interviewed who had information about what happened to Gelser and Steiner Hayward, but they didn't want any fresh information coming out about conduct toward other people. And so we anticipated that would be an issue. I most likely had a discussion with [STUDENT B] about that, and that was the context in which we talked about, Well, you know, I don't know if you're -- you know, I don't know if intern includes extern. I certainly didn't tell her it didn't because I -- how did I know? There was no way I could know what the meaning of that word was. So I recall having a discussion. I recall her telling me the difference between an extern and an intern. And I recall that there was some discussion about whether extern was included in the word intern under the personnel rule. I can only assume that it came up in the context of how this was going to affect her. Whether -- there was an issue of whether they would be called to testify by the Senate Committee.

BOLI: Yeah.

MS. RUBANOFF: And so in that context I would have explained that, you know, we didn't know and we didn't even know if their information would be able to be included in the final report.

44. At interview with BOLI, Student B stated when she was working in Medford, prior to the filing of this complaint, a coworker with a personal connection to a legislator asked if there was going to be a formal lawsuit as a result of the allegations against Senator Kruse. Student B stated that she told the coworker that she didn't know the answer, but if there was a lawsuit, she couldn't be part of it because she wasn't paid. BOLI subsequently contacted the individual described by Student B, and asked if she could confirm Student B's statement. That individual confirmed the general conversation but stated that she couldn't recall if

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

they specifically talked about if Student B could be involved in a lawsuit or not. The individual stated it was possible if they talked about that topic that it would come up, but she just couldn't recall. The individual then requested that BOLI keep her name confidential.

45. At interview with BOLI, Student A stated that the first time someone said what happened wasn't OK was in the letter that Commissioner Avakian sent, and that receiving his letter was the first time she knew there were options.

POWER DIFFERENTIALS

46. Ms. Rubanoff's Final Investigation Report Regarding Complaints Against Senator Jeff Kruse includes the following:
 - a. "Precluding a member from complaining about a pattern of conduct directed at herself and other women in the workplace also ignores the power differentials that exist at the Capitol, particularly between employees and legislators. The reality is that employees who feel vulnerable due to this power differential may be fearful to come forward and complain about unwelcome conduct by an elected official unless someone who is less vulnerable, such as another elected official, opens the door."
 - b. Senator Burdick told Ms. Rubanoff: "Senator Kruse has been on her committees. He has been a good ally on several big issues."
 - c. Senator Burdick told Ms. Rubanoff: "Senator Burdick did not notice any change in Senator Kruse's behavior in 2017. Senator Burdick has concerns about staff members because she was in a position to choose not to say anything about Senator Kruse's unwelcome conduct toward herself, but for a staffer it may not feel like a choice (referring to the power differential). Senator Burdick stated that if someone is that oblivious and that disrespectful, you can't take a chance on how far it's going to go."
 - d. One of the law students told Ms. Rubanoff that she felt she had to hug Senator Kruse back "because he was my boss."
 - e. The two law students "did not tell anyone in authority the truth about their reasons for wanting a change in assignment, because they perceived that Senator Kruse's behavior was generally known and tolerated at the Capitol. They did not feel they could tell Senator Kruse that the conduct was unwelcome, because as one of them stated, 'I was just starting my career and he had all of the power.'"
47. In response to BOLI's subpoenas, Respondents provided an audio recording of Ms. Rubanoff's interview with Betsy Imholt, Chief of Staff for Senate President Peter Courtney. In her interview with Ms. Rubanoff, Betsy Imholt stated: "Well, I was concerned because when I had heard the Senator Steiner Hayward story who so, you know, that made me concerned because *if she*

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

can't get him to back off. I don't know how anybody can....Because she's a senator, she's a peer, he respects her, she's a doctor. Um, she had very direct conversation with him. And no change. So I felt like I don't know is it a safety issue, uh, I mean, what I really feel like is like it's just, it is unwanted and it's not getting dealt with." (Emphasis added.)

48. At interview, BOLI asked Senator Gelser if she had any knowledge regarding the claim that Representative Hernandez maintained a list ranking female lobbyists by their physical attributes, Senator Gelser stated: "So in this case my understanding is that at the sine die party there was – a lot of people are drinking, and there was an altercation between a lobbyist and her husband and Representative Hernandez. And that the lobbyist and her husband were asked to leave...And they did not feel like that interaction in itself was appropriate. And they then went – and this is *what I've heard* from members of the lobby about this. That they then went to meet with Lore Christopher to do a complaint and went to the Speaker's Office, but *that Lore Christopher told them that it wouldn't go anywhere because he was an up-and-coming person that was going to have a lot of power.*" (Emphasis added.)
49. At interview with BOLI, Senator Gelser stated: "I have talked to just general staff in the building who have multiples of them who have said they're not sure what to do because it's not – their concern isn't that they have had an egregious situation occur. But it's all the little things that happen all the time, and they don't know how to raise those concerns that go to what the culture is. So it's the people commenting on the way they look in their clothes. It's the lobbyists or the senior staffer in the bar after work hitting on you or saddling up close to you, and it's not appropriate just because of that power differential. It's the lobbyist that comes around your desk and wraps your arm – his arm around you and is like, Oh [sic] yeah, you've got an appointment. Right there, just that familiarity. And that – I've heard time again people don't know how to talk about it. They don't want to sound like they're whining.."
50. BOLI interviewed a person who was previously employed in Senate President Courtney's office. That person stated that when Senator Courtney found out she was dating another legislator, he told her he didn't like who she was going out with and he felt uncomfortable about that and then told her that she could either resign or be fired or be demoted. The witness states that she was told if she chose to resign, they would give her five months of her salary with all of her benefits. The witness stated that Senator Courtney told her that he had checked with Dexter Johnson who had told him that because the legislator was on the House side and she was working on the Senate side that there was no conflict. The witness stated that Lore Christopher and Betsy Imholt subsequently met with her and reiterated her options of being demoted, fired, or resigning.

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Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

51. At interview with BOLI, when Legislative Counsel Johnson was asked if he knew why the witness referenced above (paragraph 50) was separated from employment, or if he had any discussions with Senator Courtney about her employment prior to her departure, Mr. Johnson answered no.
52. At interview, BOLI asked Ms. Imholt if she was aware of Senator Courtney ever expressing any concern about a staff member dating a member of the legislature. Ms. Imholt answered no.
53. At interview, BOLI asked Mr. Johnson if any individual ever told him that they were worried about public disclosure of their cooperation in an investigation of sex harassment; Mr. Johnson answered in the affirmative. BOLI asked Mr. Johnson what those people described as the basis for their concern; Mr. Johnson answered:

“[T]hese are predominantly lobbyists and I think exclusively lobbyists. And it's a loss of business opportunity, is the best way to describe it. And a lobbyist, their job is to represent their client and go and ask a legislator to vote one way or another. And it is challenging for a lobbyist to publicly make a claim of harassment of a legislator -- by a legislator, and then two weeks later go and ask that legislator, Will you support this legislation, or, Will you oppose this legislation. So it's a loss of business opportunity. It's not a fear of retaliation or something like that.”

BOLI asked Mr. Johnson is that was how they framed their concerns to him, or if he was making an inference of that concern; Mr. Johnson answered “I think other than their asking for that this -- they're expressing concern about this being maintained confidentially, *they did not explain why*,” and “They didn't need to explain why.” (Emphasis added.)

INTERMEDIARIES

54. Respondents' Legislative Branch Personnel Rule 27: Harassment-Free Workplace describes the reporting options for employees of the Legislative Branch and members of the Legislative Assembly.
55. In a previous version of the rule, as an alternative to a “formal complaint,” a person could initiate an informal complaint to an “intermediary.” “Intermediaries” included one or more Senators, as designated by the Senate President, one or more Representatives, as designated by the Speaker of the House, the Human Resources Director, the Secretary of State, the Chief Clerk of the House of Representatives, the Legislative Administrator, and the Legislative Counsel.

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

56. The intermediary had the duty to explain and discuss the available options with the complainant. These options included asking the alleged offender to stop, using the informal complaint process, using the formal complaint process, or pursuing legal remedies through administrative agencies or courts.
57. The rule stated that the intermediary does not have the authority to impose discipline and that the informal complaint process is confidential.
58. In December 2015, the intermediary process was removed from Legislative Branch Personnel Rule 27 and the changes were presented at a Public Hearing with the Joint Committee on Legislative Administration on January 15, 2016.
59. In a declaration by Steiner Hayward in Support of Respondents-Appellants' Motion- Stay Previous Order, Senator Steiner Hayward states:

"For a period of close to four years, I served as an intermediary for employees at the Capitol. In this role, I was a designated individual who others could turn to for confidential conversations about uncomfortable experiences they may have had in relation to other employees or Legislators....Within this role, it was common that people would ask me what options they would have available for speaking with Human Resources or other resources in a manner that would maintain their confidentiality. I was required, by the design of this role, to abide by the individual's choice in these matters...Some of these individuals ultimately chose to pursue the complaint process. Some of these individuals made the personal choice that they did not wish their information or identities to be shared...Those who chose to remain confidential sometimes expressed concern over even Human Resources having access to their information and identities."

In her declaration, Senator Steiner Hayward additionally states:

"Even after I completed my role as an intermediary, there were still individuals who personally approached me, unofficially, to occasionally express concerns about behavior of other legislators or staff and asked for my guidance. These people also expressed to me directly that they wished to consult with me on the condition of confidentiality."

60. In Ms. Rubanoff's interview notes with Senator Steiner Hayward, she notes that Senator Steiner Hayward was a designated intermediary for the 2013 and 2015 session, people chose to go to her twice, and "did not involve Senator Kruse."
61. At interview, BOLI asked Senator Gelser about Senator Steiner Hayward's declaration regarding "intermediaries," and asked Senator Gelser if she was aware

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

that Senator Steiner Hayward was an intermediary; Senator Gelser answered: "I was not aware that she was an intermediary. I wasn't aware that we had intermediaries. . . . I just am surprised that we had this process and I didn't know about it."

62. At interview, BOLI asked Lore Christopher if she was aware of the process for designating individuals as intermediaries. She responded that it was up to the leadership of different chambers and they wanted representation of a female and a male and a Republican and a Democrat. She also stated that the process was recommended to be discontinued by an attorney working with them on the personnel rules.
63. At interview, BOLI asked Respondents' Deputy Legislative Counsel Jessica Santiago what she knew about the process for designating certain individuals as intermediaries. Ms. Santiago answered "I don't know about that process." BOLI asked Ms. Santiago to clarify whether she was familiar with the process of intermediaries; Ms. Santiago answered: "Not since I was involved in doing these types of inquiries. I didn't know about intermediaries." Ms. Santiago stated she was a staff attorney since 2014 and has been in her current role since 2017.
64. At interview, BOLI asked Respondents' Human Resources Analyst 2, Aimee Steketee, what she knew about the process for designating certain individuals as intermediaries. Ms. Steketee answered, "I believe that's in personnel rules...I believe that's posted in every break room and bulletin board and what have you." BOLI asked Ms. Steketee if she knew if that is still the process used today; Ms. Steketee answered: "If it's not the same, it's similar, although personnel rules have gone through changes...I don't know if public officials are now, I don't know if they are intermediaries or not." Ms. Steketee stated that she has been with the legislature since 2011.

RESPONDENTS KNEW OR SHOULD HAVE KNOWN

65. Ms. Rubanoff's Final Investigation Report Regarding Complaints Against Senator Jeff Kruse includes the following:
 - a. "I find that there is a *longstanding pattern* of Senator Kruse engaging in unwelcome physical contact toward females in the workplace, including Senator Gelser and Senator Steiner Hayward, and that *he stubbornly refused to change that behavior after being warned about it in March 2016.*" (Emphasis added.)
 - b. "Prior to the short session in 2016, Senator Kruse seems to have been oblivious to the effect of his behavior on the women whose space he invaded. But during the short session in 2016, *he was specifically told by Dexter Johnson and Lore Christopher that two female legislators had reported unwelcome closeness and touching by him. He was advised that*

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

he should stop hugging female legislators and staff members and leaning in close to talk to them, and that he should keep arms' length distance from them as a rule of thumb.” (Emphasis added.)

- c. “A Democratic Representative in the House told me that she had worked with Senator Kruse on a committee and a task force and he had been ‘very physical’ with her, although it did not seem sexual. She described that he would put his forehead on her, or grab her hands when he talked with her. There would be ‘zero space between them.’ He would give side hugs with his arm down around her waist and pull her in close. She felt trapped and like she could not get away. She said it was ‘lingering closeness,’ and ‘that’s just how the conversation was going to happen’ if she had one with Senator Kruse. She did not tell him she was uncomfortable because he was an ally on policy issues that were important to her and she did not want to alienate him. She did not perceive any change in his behavior in 2017, and she had considered filing her own formal complaint against Senator Kruse.”
- d. “A Democratic Senator who has worked closely with Senator Kruse in committee said that he gets ‘very close’ and frequently hugs her. She has just accepted it over the years, and she does not believe Senator Kruse would not any [sic] reason to know that she would prefer for him not to do it.”
- e. “A Democratic Senator who joined the Senate in 2017 told me about an incident during the mandatory training at the beginning of the session. She was standing with colleagues during a break in the training when Senator Kruse came up to her and said ‘Welcome to the Senate. I’ve heard great things about you.’ As he said that, she put out her hand to shake his hand. He grabbed her hand and then put his arm around her shoulder and pulled her in close. He asked something like, ‘Do you think this counts?’ She replied, ‘I’m pretty sure Dexter would say this is not okay,’ and she pulled away from him. Her body language would have indicated that she was not comfortable. She is not friends with Senator Kruse, and they have not worked on any projects together, so he would have no reason to believe that this behavior was okay with her.”
- f. “[Senator Ginny Burdick] has not seen Senator Kruse interact with staffers very often. The one time she saw him touching her staff member, she intervened. It was probably in 2011 or 2012. Her staff member was sitting in the chair next to hers on the Senate floor, and Senator Kruse was standing behind the staff member with his hands on her arms. Senator Burdick saw it and said, ‘get your hands off my staff.’ She believed from personal experience that he got too close to women, and when she saw it happening to her staff member she reacted quickly.”
 - i. A note from Ms. Rubanoff states, “A male staff member whom I interviewed clearly recalled this incident between Senator Kruse and Senator Burdick’s staff member, and that when Senator

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

Burdick told Senator Kruse to stop touching the female staff member, he chuckled, and Senator Burdick had to tell him to stop two more times before he complied. The male staff member believes that this happened during the 2013 legislative session.” (Emphasis added.)

- g. “I interviewed a former Democratic member of the Senate who corroborated Senator Gelser’s statement that he witnessed an incident between Senator Gelser and Senator Kruse on the Senate floor during the 2016 short session. *This person told me that what he saw caused him to think Senator Gelser was uncomfortable and needed to be rescued. He recalls that from his viewpoint it looked like Senator Kruse was sitting very close to Senator Gelser and leaning over her chest, with a clear view of her chest while talking to her.* The Senator pretended that he needed to talk to Senator Gelser in order to interrupt her interaction with Senator Kruse. After Senator Kruse walked away, Senator Gelser thanked him and confirmed that she had been really uncomfortable.” (Emphasis added.)
- h. “Lore Christopher is the Human Resources Director for the Legislature. After reviewing her notes, she confirmed to me that she and Dexter Johnson met with Senator Gelser on March 3, 2016 to discuss Senator Gelser’s informal report regarding unwelcome conduct by Senator Kruse.”
- i. “Another staff member in the Senate Republican caucus office described conduct by Senator Kruse that made her uncomfortable. There were times when Senator Kruse would grab her arm or put his arm around her shoulder, and a couple of times his arm was around her waist. She had not seen him do that with male staffers. He would pull her close to tell her something. The whispering was uncomfortable, but it didn’t seem sexual. She would tense up, and she would have preferred if someone had told him to stop doing it. Sometimes he would come up to her at the back of the Senate Chamber and squeeze or rub her shoulders for a few seconds. He continued to do that during the 2017 session. I asked if she knew of anyone other staff member who had an uncomfortable interaction with Senator Kruse. She told me that she was present when Senator Kruse came up to another staff member in her office who was sitting on a bench at the back of the Senate Chamber. Senator Kruse knelt in front of the staff member and put his hands on either side of her to talk to her. She clearly appeared to feel uncomfortable. This would have occurred at the beginning of the 2017 session.”
 - i. A note from Ms. Rubanoff states, “The other staff member mentioned above corroborated the incident of Senator Kruse kneeling in front of her, and she told me that she felt like Senator Kruse had his head in the area of her lap. She felt uncomfortable and trapped. This staff member also told me that Senator Kruse’s name has been mentioned in discussions among staff members during training ‘as someone who might need some talking to.’”

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Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

66. At interview with BOLI, Senator Gelser stated that after the Commissioner's complaint came out:

"I called Peter Courtney because I was – you know, I had never heard those things about the employee and Senator Courtney's office before and it surprised me. But I had a number of meetings. And in those meetings and interactions with people, young people in the building, *they're like, 'Yeah, everybody knew that about [Robin Maxey], and other people have those complaints about him.'* And it was nothing actionable. Like, I couldn't say, 'This person had this experience on this day,' nor could I tell whether it was true or not...But I called Peter and I said, Peter, I'm concerned about you and I just think, like, if the situation was reversed, I would want you to call me because this is where you sit right now: You have a BOLI complaint sitting out against you. I forget what this other thing was. Your office is named in it and you need to know that there's women around the building saying they've had this experience too. *And he's like, I don't know what to do about it.* But then immediately Betsy called and I immediately got a call from Lore Christopher. So I know that Peter immediately took action on that. And Lore called and she's like, 'You got to tell me who these people are; you got to tell me who these people are, so I can track them down and track down the things.'"

(Emphasis added.)

67. In her interview with Ms. Rubanoff, Betsy Imholt stated:

- a. While discussing Senators Gelser and Steiner Hayward reporting conduct by former Senator Kruse in March 2016, "But no one had ever said that to me before although I have to tell you I know what they're talking about because I think every—you know, it's nothing that I would have personally ever reported but I've, I've had him hug me. I don't hug anybody at work. I don't, you know, I don't put my arms around people. So I knew, I knew what they were talking about, um, you know, when they described it."
- b. In response to a question if she had observed conduct of former Senator Kruse touching women in a way that would have made her uncomfortable if done to her, "I can't recall any sort of moment in particular, but if I saw that at all to anybody, which is obviously very likely at some point in the last twenty years, I've seen, I've witnessed that with my eyes, I would think to myself, ew...it's a very known fact that, for me, my, I know that this is what he does. So if I were to see him do that I would just be like ugh."

68. In a document provided by Respondents dated October 30, 2017, that appears to be interview notes with an employee in the Legislative Policy and Research

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

Office, the notes state "She has witnessed building-wide guy-to-guy 'locker-room' talk that is offensive."

69. Respondents provided a document consisting of handwritten notes of interviews conducted by Aimee Steketee in November 2017. Those notes include, but are not limited to, the following:

"Rep. Post was at the end of the table he was directly next to Post. Saw him touch her leg, or 'something like that.' Saw him sending her text msgs throughout the night. Did not see the content. [REDACTED FEMALE STAFFER NAME] showed him texts after the fact, after he left."

70. Respondents provided a document consisting of handwritten notes of interviews conducted by Jessica Santiago in November 2017. Those notes include, but are not limited to, the following:

"10/13/17 Rep Post contacted [WITNESS]. Later indicated that [REDACTED LOBBYIST NAME] would join them. Text says 'McGoo's 5pm?' – [WITNESS]'s invitation was specific, [WITNESS] added [REDACTED FEMALE STAFFER NAME]. Party sat together, Post & [REDACTED FEMALE STAFFER NAME] were side by side at a long table – had individual conversations between Post & [REDACTED FEMALE STAFFER NAME]. Shared texts w/[WITNESS] that were sent to her by Post under the table. Post mentioned at least 5 times that his wife was out of town. [WITNESS] went to restroom – when he returned Post was holding [REDACTED FEMALE STAFFER NAME]'s chin & saying something about her being cute."

FAILURE TO TAKE IMMEDIATE & APPROPRIATE CORRECTIVE ACTION OR TO EXERCISE REASONABLE CARE TO PREVENT OR PROMPTLY CORRECT HARASSING BEHAVIOR

71. Ms. Rubanoff's Final Investigation Report Regarding Complaints Against Senator Jeff Kruse includes the following:
- a. "To be clear, my interpretation of the personnel rule is not intended to suggest that conduct toward a person other than Senator Gelser or Senator Steiner Hayward could be the basis, by itself, for disciplinary action against a member."
 - b. "Senator Kruse admits that *he did not do anything to change his behavior [in 2016], because he did not know which females in the workplace had complained about him, and he did not want to stop hugging and touching all of them.*"
 - c. "Witnesses also reported to me that Senator Kruse had made jokes about the sexual harassment training that he received in January 2017."
 - d. "Senator Kruse's hugging and touching of women not only continued after the warnings he received, the evidence shows that the conduct actually

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

escalated during the 2017 session, at least with respect to two law students who were assigned to his office. He also engaged in offensive conduct toward a young lobbyist in September 2017 during an event in the Governor's office." (Emphasis in original.)

- e. "Senator Kruse admits that he did not take seriously the warnings he received from Dexter Johnson and Lore Christopher, or the requests from Senator Steiner Hayward to respect her personal space. As recently as October 2017, when Senator Steiner Hayward objected to his continued unwelcome conduct, he made statements to her that 'women cry wolf' and 'men get harassed too,' and that he didn't see why her concerns were 'a big deal.'"
 - f. "[Senator Steiner Hayward] did not take action when the conduct started up again during the 2017 session because there had been a higher level of partisanship and acrimony in the Senate in 2016, and the members had been through civility training, which was having a positive effect. It would have been highly disruptive to make a formal issue with Senator Kruse at that time. *She also didn't think it would change anything to go back to Lore and Dexter because it had not worked the last time.*" (Emphasis added.)
72. In her signed declaration, Senator Steiner Hayward stated, "Both during and after my role as an intermediary, I was able to express to the individuals who approached me with their concerns that I had personal experience with, and trust in, the process available to complainants at the Capitol."
73. At interview with BOLI, a lobbyist described making a report to Lore Christopher at the end of 2017 regarding unwanted conduct by former Senator Kruse. She stated that Ms. Christopher told her that about 26 people had come forward to make allegations against Senator Kruse.
74. In her interview with Ms. Rubanoff, Betsy Imholt stated:
- a. In response to if the training has remained basically the same in 2015, 2016, 2017 sessions, "[w]ell it is, I think basically the policy changed, for one. So, it may have shifted a bit because we did rewrite and adopt the policies. Also who delivered it changed. So that's kind of been ongoing, um, issue since we started doing this in the '90s which I was here for all that too. So I think, um, last year was the first year Jessica Santiago, um, delivered it. So I think that gave it a bit of a different you know, feel, in a positive way, in my opinion. More maybe modern and current and not so legalese to have lawyers come. I mean she's a lawyer too, but we used to have like DOJ come and it would just be like a snoozer, you know. So I think she made it a little more, um, you know you wanted to listen and pay attention and it was, it was better for sure."

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

- b. In response to a question about any informal feedback regarding training, “the main thing I’ve heard over and over again is that no one takes the training seriously and I guess that’s really frustrating to me because, you know, I show up and I take it seriously. The President introduces the training; that is taking it seriously. So I guess I find that people need to somewhat be responsible for taking it seriously. I, so, that’s been the one thing that has come up that you know that people don’t take it seriously.”
75. At interview with BOLI, when Ms. Imholt was asked about her statement that no one takes sex harassment training seriously, she said she did not recall making the statement. When BOLI asked Ms. Imholt if that was something she had heard, that no one takes the harassment training seriously, Ms. Imholt said “I actually think that people have come a long way on that, to be honest with you.”
76. In a document provided by Respondents and dated October 30, 2017, that appears to be interview notes with an employee; the notes state, “She described personal experiences and observations of Senator Kruse where he leans in with his arms over shoulders. She also described examples, specific to women, where Senator Kruse touches the small of the back of a woman as if to guide her while walking. One other example that stood out to her was a time when she was seated at the back of the Senate floor, Senator Kruse knelt down facing her and he was facing her lap so he could say something to her. She mentioned that her concerns were for newer employees who may not be used to the touching. She has warned people ‘this is how he is.’” The notes also state, in response to a question about experience or observation of other workplace behavior with other Members that the interviewee felt was inappropriate or unwelcome, *“This is common place among members and members of the lobby ‘especially when alcohol is involved.’ She elaborated that when alcohol is involved people tend to get ‘handsy’ and the jokes become ‘inappropriate.’ Also this type of conduct often happens when people are working late.”* (Emphasis added.) Additionally, the notes state, *“Inappropriate jokes and unwanted touching is prevalent behavior in the building* and the attitude of the recent ‘movement’ is minimized.” (Emphasis added.) Lastly, the notes state, “The mandatory harassment training is ineffective because people take it as a joke. The examples used in the presentation are often used as material for these jokes.”
77. At interview with BOLI, Senator Gelser stated that when she alerted the Senate President’s Office that she was going to file the complaint, Senator Courtney “made a comment of a request, like, would I consider delaying because we were going to have this floor session. It was supposed to be a really nice day for Richard Devlin and Ted Ferrioli, and that the Republicans were going to have their leadership elections. And if I could wait until after that, it would be less disruptive.” Senator Gelser stated “That was very upsetting to me, and I believe I said something to him along the lines of, ‘You now know that we have all of these

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

women, and I think to put the needs of these women behind the political needs of a whole bunch of men is not appropriate.” Senator Gelser stated that Senator Courtney called her back about five minutes later and said he was sorry and clarified that she could file the complaint any time she wanted, but that he was “just trying to think about how to manage the building.”

78. At interview with BOLI, Senator Gelser stated: “The other thing that happened was after the report came out before the Conduct Committee, they made this big thing about how Jeff Kruse was voluntarily agreeing to stay away from the capitol. At this point they had moved him into the House Republican Caucus Office. And what was frustrating about that is some of his victims were including the woman on whose head – lap he laid his head, were staffed in the House Republican Office. And according to those staff, the way that they handled that was the chief of staff came in and said, ‘You don’t mind if we have Jeff here, do you.’ Like I don’t know what they were – I have no idea what they were supposed to say. But that’s where he was.”
79. On July 19, 2018, in testimony before the Oregon Law Commission, Senator Gelser offered statements including the following:
 - a. Shortly after former Senator Kruse resigned, another Senator came up to her and said he did not understand why she was upset, that he had waited his whole life for someone to harass him, and he would say thank you if a woman would inappropriately touch him.
 - b. Senator Gelser described a Member telling a lobbyist he did not know if he wanted to talk to her because she was one of the 130 “cry babies” who signed the Me Too letter about harassment in the Capitol.
 - c. Senator Gelser also described a sexual harassment training at the Capitol during her first session in 2007 that occurred in the last week or two prior to the end of the session that included jokes about “what if I want to date my staff.” Senator Gelser stated “It was pretty offensive.”
 - d. Senator Gelser stated that everything about the complaint process was political and she had to think about how to vote on things because she cannot make anybody mad as they had to have an expulsion vote later. Senator Gelser said she was disappointed there was not an official statement from the Legislature as a body or the Senate as a body that this behavior was unacceptable. Senator Gelser also discussed the concern that a complaint against a Member affects that Member’s constituents and stated that it affected her constituents and how she was able to do her job not knowing if she would have to see the person she complained against. Lastly, Senator Gelser described that there is fear to come forward and politics relies on loyalty and relationships and the idea that they are all part of a family.

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

PROCESS AND POTENTIAL CHILLING EFFECTS

80. At interview with BOLI, in response to a question regarding Ms. Rubanoff's interview notes with an employee that noted a lack of trust and discomfort reporting to HR, Ms. Rubanoff stated that she thinks it was based on a feeling that the HR staff "might not be terribly confidential. It wasn't a lack of confidence in Lore Christopher...My impression was it was that HR staff sometimes will talk about what they know."
81. In a document provided by Respondents dated October 31, 2017, that appears to be interview notes with an employee with the Senate Republican Office, the notes state, "she indicated that for the mandatory harassment training, we may consider hiring outside consultant to present the training since due to perception *or lack of trust, some people may disregard training presented by internal staff.*" (Emphasis added.)
82. At interview with BOLI, when asked about Mr. Rubanoff's statements in her final investigation report that she did not believe that Senator Kruse is a bad person and if she typically offers similar opinions, Ms. Rubanoff stated, "I did not feel like he had intended [to] be offensive. And you know, frankly, I needed to have credibility with both sides of the aisle."
83. At interview with BOLI, Senator Gelser offered the following statements:
 - a. That her staff were singled out for wearing "Time's Up" stickers on the floor, and told they either needed to take the sticker off or leave.
 - b. That there had been a time when Senator Steiner Hayward and Senator Kathleen Taylor and she had discussed jointly putting a complaint together. Senator Gelser stated they subsequently agreed it made more sense to do the complaints individually on their own. Senator Gelser stated she got a text message from Senator Steiner Hayward that said she had completed her draft and had turned it over to Lore Christopher and Dexter Johnson for them to review and edit.
84. In response to a subpoena issued by BOLI, Senator Gelser provided documents including but not limited to:
 - a. Text messages with Senator Steiner Hayward ("Elizabeth"). These include:
 - i. A message on November 15 from "Elizabeth" stating, "I'm meeting with Dexter and Lore at 1:00 pm to review my draft letter and the process."
 - ii. A message on November 15 from "Elizabeth" stating, "Mine's in too. *We're trying to keep mine quiet for now, per Lore and Dexter's request.* This sucks[.] Sending you big hugs." (Emphasis added.)

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

- iii. A message in response from Senator Gelser stating, "Why does it have to stay quiet? I've been out here on my own for a month and he is still in the building.... I respect your choice, but just curious the rationale."
 - iv. A message in response from "Elizabeth" stating, "*Not my choice.* Dexter and Lore's based on official process. In your case that wasn't an option due to previous circumstances." (Emphasis added.)
85. At interview with BOLI, Senator Gelser also offered the following statements:
- a. That once she retained an attorney, she called Senator Steiner Hayward to find out who her attorney was so their attorneys could connect. Senator Gelser stated that Senator Steiner Hayward told her that she had been advised not to get an attorney because it would make things more difficult. Senator Gelser stated that Senator Steiner Hayward also expressed "that she was getting mixed signals from leadership about what she was supposed to say or not supposed to say."
 - b. That when she asked Dexter Johnson about reimbursement for attorney fees, "he said no, that he was my attorney, that he was there to advise me and take me through the process. I responded to that and said that that didn't make sense to me because how could he represent me and represent Kruse and represent the Assembly. And I understood him to be the counsel for the Assembly and therefore his primary loyalty should be to the Assembly. And I thought that their interests could be different than mine. And he said that it was no – that he could not advocate for me, but he could answer all of my legal questions. And that it wasn't any different than providing, you know, legal opinions to two different people that had, you know, different views on a bill."
 - c. That after Respondents met and authorized retaining outside legal counsel for responding to the Commissioner's complaint, she again raised the question of reimbursement for her own attorney fees. Senator Gelser stated that "they said that there was still no money available for legal fees for me. That I was welcome to use their attorney. I replied that I was concerned that in the initial responses from Dexter and others that they were suggesting that the interns and that the claims were not truthful, and that that would cause us to have conflicting interests. Because they're – the v[e]racity of those interns was very key to the investigator's report. And that if their strategy to defend themselves was going to be at any point recommended to be questioning the motivations of the v[e]racity of people who had brought forward complaints, that that would be a conflicting interest."

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

86. At interview, BOLI informed Student B of Respondents' denial regarding the alleged statement that her career would be over, and asked her to describe the call in more detail. Student B answered:

"Yeah. So I'm just going to go from memory. So I'm sitting in my kitchen and my fiancé is in the, like, fridge. He's sitting there. I get the phone call. And it's somebody from the Leg -- I think it's Leg counsel calling me to tell me that the public records request can no longer be pushed back. So at the time what was happening was people, reporters, things like this, kept sending public requests about staff names. And they had been -- the Legislature had been pushing back on giving any of those names out. And they were able to -- according to this phone call, what I was told, they were able to deny these public records requests because the session was still in session. But I got the phone call right around the end of the session to be told that they could no longer deny the requests, and they had exactly two weeks to respond. So they were going to respond at the very last two-minute -- or two-week mark. Called to let me know that while they were able to kind of finagle the list for their interns [indiscernible] they were able to get her listed underneath a different senator. My name was going to be listed under Senator Kruse for the date listed in these investigations. And she was sorry about that. You know, felt bad that they couldn't keep my name private and said exactly what I told you he said about my -- you know, showing sympathy that my career was over at the capitol. And after that phone call, I don't know how your guys' rules of evidence work, but after that phone call I hung up the -- like, the phone call and sat in my kitchen and just completely, like, bawled and cried to my fiancé about what had just been said to me. So I don't know if you guys would want to talk to him and see what his impression was at the time if he remembers it. But I definitely was just in shock. And actually I went through my text messages, and I have a message from that day where I text [Student A] and I tell [Student A] what was just said to me."

87. At interview with BOLI, Mr. Johnson made statements including the following:

- BOLI asked Mr. Johnson, when a claim of sex harassment is made against a member or an employee of the Legislature, did he represent the interests of either the complainant or the alleged bad actor; Mr. Johnson answered "no."
- BOLI asked Mr. Johnson if he had ever been involved in a discussion as to whether there could be an actual or apparent conflict of interest when he became involved in responding to claims of sex harassment; Mr. Johnson stated that he could not recall.
- During the interview with Mr. Johnson, BOLI read the following excerpt from Ms. Rubanoff's investigative report:

"Additionally although lobbyists are not covered by personnel rule 27, conduct by Senator Kruse toward a lobbyist that allegedly

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

occurred within the one-year period was also deemed to be relevant to demonstrating a pattern of conduct in this investigation because it was similar to specific conduct alleged by Sara Gelser. To be clear, my interpretation of the personnel rule is not intended to suggest a conduct toward a person other than Senator Gelser or Senator Steiner Hayward could be the basis by itself for disciplinary action against a member.”

BOLI then asked Mr. Johnson if he could interpret what Ms. Rubanoff was trying to convey in that statement; Mr. Johnson answered “No. I think you'd have to ask her.”

- BOLI asked Mr. Johnson about Respondents’ characterization of a claim (against Representative Hernandez) as false. Mr. Johnson confirmed that was Respondents’ conclusion. Mr. Johnson was then asked how much consideration he gave to distinguishing between declaring a claim false versus unsubstantiated. Mr. Johnson answered that he would use the terms in conversation as synonyms.

88. At interview, BOLI asked Senator Gelser if she had any reason to believe that Employee A or Employee B would have lied about being told that if they talked about their claims it could be seen as defamation, or that Dexter Johnson told one of them that she should not talk about her complaint with anyone. Senator Gelser answered: “No. I mean I certainly felt very confused by Dexter's repeated admonitions to me that this was confidential and I should not talk about it.”
89. At interview, BOLI asked Senator Gelser if she was aware of other people who were subjected to sexual harassment or other misconduct at the Capitol by anyone besides Senator Kruse, Senator Gelser expressed concern about the applicability of the protective order: “So I know the protective order applies to my documents. How does that apply to disclosure of names here? Like, if I share that information, is that all out there and then my colleagues know, Well, she's the one that outed representative so and so, and then I never pass a bill again.” Senator Gelser declined to offer any names pending clarification regarding the protective order. Senator Gelser stated “I think the question is both in terms of the victims and I'm much more concerned about, like, naming the elected official.”
90. At interview with BOLI, Senator Gelser described an interaction when she approached Senate President Peter Courtney in a coffee shop in Salishan. Senator Gelser stated that she approached Senator Courtney for a couple of reasons. Senator Gelser stated that she said to Senator Courtney that she wanted the chance to talk about the concerns that she had “about how things are unfolding and how people may not realize that that is impacting the culture in the building.” Senator Gelser stated that she gave Senator Courtney a series of examples:
“One was, I understand that you are in a legal process and you have to hire an attorney that vigorously supports you, but you have an attorney that's

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Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

making demeaning comments about women that have come forward including that what they're saying is not true or statements like, Well, sure there was harassment but it's not pervasive. It's like, that is having a chilling effect on people that work here now. And I know you're not saying those things, but the attorney that theoretically represents all of us. I was like, I say, he doesn't represent me, but it says, The Legislature, and I'm concerned about that. I think that there's a place for the Legislature to have a conversation around how do we want people to talk about this, and how does that impact the culture? I shared that I thought that we should talk more about what our responsibilities are as employers around proactively intervening when we see things happen. And instead of saying when we see, you know, a lobbyist come put their arms around a staff person, waiting for the lobbyist to leave and then saying, Are you okay; was that okay, which is what happens. Is to stop the behavior when it happens, and then say to the person, What just happened to you was not okay; what do you need me to do; what would you like me to do. Rather than just putting that on the person. And then I expressed my concern that these letters from Brian [Boquist] had been escalating over time, that we see this type of behavior directed at people like Betsy Imholt, who was standing right there. And I didn't understand why nobody had said anything before I did that day. That we all should -- I said I should have said something a long time ago and other people should have. And, you know, I was in a setting where he talked about that and he talked in a group of people about what a difficult decision it was to send that memo. And I was like, I don't understand why that would be a difficult decision. This is your chief of staff. She serves all of us. She was harassed. It was a violation of the policy. Your job is to enforce the policy. And at that point he freaked out and was yelling at me that I didn't understand. I didn't understand how hard this was on him. How frightened he was, how complicated the situation was with Brian Boquist who had been there for a really long time. And how dare I suggest that he not care about people or that he's done nothing. And it was just a lot of this stuff. And ultimately it became a disturbance in the restaurant. His wife asked him to go. The restaurant staff after he left said, I don't know what just happened there but I'm really sorry; can we get anything for you. Shemia walked in -- Fagan -- at the end of it. I was terribly upset. I said to Betsy Imholt, This is why it doesn't get better and why -- you guys want to know why people don't tell you all the things that are happening, that -- that response is why; that is why that happens."

91. At interview with BOLI, Respondents' Deputy Legislative Counsel Jessica Santiago confirmed that she conducted some interviews pertaining to the harassment allegations against Senator Kruse. BOLI asked Ms. Santiago if she had ever been asked to conduct similar interviews. Ms. Santiago stated that prior

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

to the Kruse investigation, she was involved in a separate investigation, which was a request to have a fact-finding inquiry be done on the person who requested the investigation, around an alleged rumor. When BOLI asked for more details about what that pertained to, Ms. Santiago stated:

“So there was a rumor being spread throughout the Capitol or among employees and lobbyists that referenced, like, a ranking list of lobbyists and their physical appearances, and it involved a member of the Legislative Assembly. *That member asked our office to conduct a fact-finding inquiry to determine whether or not the rumors were true or to find out also who may have been the source of the rumor.*” (Emphasis added.)

92. On November 7, 2018, Employee B signed a declaration that included the following:
 - I am acquainted with *other persons who have worked at the Oregon State Capitol, and who have disclosed to me that they have been subjected to sexually harassing conduct at the State Capitol.*
 - I have asked those persons for permission to disclose their identities to BOLI, in cooperation with the agency's investigation of this matter.
 - Those persons have told me they do not want me to disclose their identities, due to *fear that doing so will result in harm to their career opportunities.* I share those concerns, which is why I requested not to be identified in the Commissioner's Complaint. (Emphasis added.)
93. At interview with BOLI, Senator Gelser stated that after she went through the informal complaint process, nobody ever checked back to ask if the behavior had improved, if things were any better.
94. At interview with BOLI, Senator Gelser stated that when she went to a mandatory sexual harassment training following her complaint against Senator Kruse, attendees were required to sign in at a table. Senator Gelser stated that Senator Kruse was standing at the table, that she waited for him to go away, but that he never went away. Senator Gelser went on to state: “So I had to go over and sign in, which was upsetting and he didn't leave. He didn't move. And I expressed that concern to Dexter. And Dexter said that that was my fault. That I should have waited for an alternate way to sign in. That Jeff Kruse had already claimed that space, and it was my responsibility to not go into that space.”
95. At interview with BOLI, Senator Gelser stated that in early 2018 she asked Senator Jackie Winters if Senator Kruse could stay away from the building unless he had a meeting. Senator Gelser stated that Senator Winters said there's no way she would consider doing that, and that Senator Winters said “You just have to remember we're all a family here and we're going to take care of everybody, and

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

this is just something we have to work out in the family . . . There's no way I'm asking him to leave; you just need to learn how to deal with this."

96. While interviewing Ms. Rubanoff, BOLI referenced her testimony before the Oregon Law Commission in which she indicated that she felt intimidated by a legislator during her investigation. BOLI asked her who the legislator was, and she stated it was Senator Fred Girod. BOLI asked how Senator Girod intimidated her, and Ms. Rubanoff stated "He became very angry and hostile during our interview, and he eventually stormed out. He said, 'We know you're a Democrat,' and he impugned my integrity, and he stormed out and slammed the door." BOLI asked Ms. Rubanoff if Senator Girod at any point made her feel fearful for her physical safety. Ms. Rubanoff answered: "Little bit. I wasn't sure how angry he was going to get. I was pretty shaken when it was over." The interview continued:

BOLI: And did you ever report that to anyone involved in your investigation?

MS. RUBANOFF: Dexter Johnson was aware of it, and I told him I didn't want him to do anything about it.

BOLI: Okay.

MS. RUBANOFF: That I was a big girl and I could handle that type of thing happening in an investigation. Dexter and Lore made sure that I knew going into this that it could be rough and that -- and they asked me if I had, you know, the stomach for bad publicity and people being upset with me. And I told them I could handle it. So I wasn't going to then tell Dexter I couldn't handle that after all.

BOLI: But you did report the fact of the incident to him so that he --

MS. RUBANOFF: He was aware of it.

97. At interview, BOLI asked Mr. Johnson about Ms. Rubanoff's testimony before the Oregon Law Commission that during the course of her investigation, a legislator attempted to intimidate her. BOLI asked Mr. Johnson when did he first learn about that and how did he respond? Mr. Johnson answered:

"I first learned about it immediately after it happened. And I asked Ms. Rubanoff whether she wanted me to follow up with the legislator and she said no. She expressly said, 'No, I want to maintain the independence of the investigation so I do not want you to follow up.'"

RETALIATION CONCERNS

98. At interview with BOLI, Senator Gelser stated that Senator Tim Knopp called her right after she filed the formal complaint, and he said that he read her complaint, that he believed her, that he supported her, and asked what he could do to make things better. Senator Gelser stated that Senator Knopp alerted her that the Senate caucus leadership were in discussions with Senator Kruse about how he could sue her, and how they could have her expelled from the Legislature for having this

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

brought forward. Senator Gelser offered her opinion that Senator Knopp was in line to be the Republican caucus leader, but "he now has no leadership position because of the stand he took related to this behavior."

99. Senator Gelser also told BOLI that Senator Knopp "alerted me that the Senate caucus leadership were in discussions with Kruse about how he could sue me, how they could have me expelled from the Legislature for having this brought forward. . . . Senator Olsen said to me afterward it's a good thing the Conduct Committee didn't happen because [they] were going to tear [me] to shreds."

100. At interview, BOLI asked Senator Gelser about a statement she made before the Oregon Law Commission, in which she stated that people were fearful to speak up. BOLI asked if she could explain who she was speaking about and why they were fearful to speak up. Senator Gelser answered:

"So I think that there are staff and lobbyists that are worried that they will be marginalized or placed on, kind of, outer rungs of influence if they -- if they rock the boat. I think that people saw and were surprised that here you had a case where you had a very clear report from an investigator, you had video, you had eyewitnesses, you had two senators against another senator, and still people -- still to this day people say, It wasn't true; it was all made up; it's because Sara wants to run for Congress.

And I don't know why it's all put on me and not on Elizabeth. But, you know, people were like, Well, why would I put myself through that because absolutely nothing is going to happen. I know I talked to a lobbyist who had two really horrible interactions last November. So all of this is going on, a Republican fundraiser right around legislative days, and I'm not going to identify the lobbyist, but I will identify what she alleged to me occurred. That Senator Olsen said to her that he knew everything he knew -- needed to know about her. She was one of the 135 whiners that signed onto the Me Too letter. He hadn't read the letter. He just knew that they were whiners and he couldn't take her seriously. And if that doesn't tell you you shouldn't complain, that's another thing.

And then the chief of staff for the Republican Office pursued her that evening and continued telling her that his wife was out of town, they should go back to his place and she continued rebuffing him, was not interested, but was also just really shocked that in the midst of all these things going on, that that would -- that that would still occur. There was the other lobbyist. I don't know if she ended up being part of the report or not. But also while these things were going on, it was another Republican fundraiser – House and Senate Republican fundraiser. And she got there and she was the only female lobbyist, and they assigned her to a golf cart with Jeff Kruse, which already made her nervous. There was another male

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Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

with her. But in the middle of the day they stopped the cart, Jeff Kruse got out of the cart and dropped his pants and peed on the golf course right in front of her exposing himself to her. She was nervous about whether that would impact her [indiscernible] other people to talk about that. I can't even remember who it was that helped me know about that. Because I included that in my complaint and, kind of, ran that language by -- I still don't know who this lobbyist is -- but to make sure that I was being accurate."

- I01. At interview, BOLI asked Senator Gelser if anyone in the Legislature ever made her feel pressured to downplay her reporting of Senator Kruse's conduct. Senator Gelser answered:

"I think I received feedback that my openness in talking about it was not appropriate. After the initial complaint came out, Dennis Richardson and Knute Buehler and Tobias Read and Jeanne Atkins asked for him to resign. That did not come from any of the women in leadership. And that was a surprise to me. And I talked with the Speaker and Jennifer Williamson, and they both informed me that Ginny Burdick had specifically called them and asked them not to do that, and that other caucus members were directed by Senator Burdick not to make comment and not to call for his resignation or support calls for his resignation. That we needed to let the Republicans take care of this themselves. And people believed that I was on board with that strategy. And I called Ginny and Ginny said something to the effect of she wanted results and I wanted to grandstand. And I -- that was really hurtful. We talked about it later. She said maybe she used that word but she didn't intend to tell me that I was grandstanding. And I would say we've had some significant conflict since that because I confided and I think that got back to her. But my understanding is she used that word with Jennifer as well. So that felt bad. I mean, at that point not – talking about it publicly was the only way to signal to other women to, one, come forward and participate in the investigation. If they had stories, this was the time to speak up, or to be careful when they were there. So she never said don't do it. It was just it's not effective. And then she said something about how her strategy was going to work and that when it did, she expected me to give her credit for everything that she had done. And I do. Like, Ginny -- there are things that Ginny did that were great. Like, she stepped in on the floor that day and said, Get your hands off of Senator Gelser. She was very clear in her communication, and I think we had a disagreement about how we should talk about it. And I think she saw that as a political consideration."

Senator Gelser went on to state:

"In my conversation with Tina later -- because then she went through this period of, I'm going to issue a statement. Then, Oh, I got sick. Oh, I'm still

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

working on it. Oh, maybe I won't do it. And then we talked on the phone and she was, like, on her way back from the leadership summit. And she said, you know, couldn't I help her find some other people to talk to because, you know, this was very political and the problem was people don't like me. She's like, People don't like you and I was talking to a Republican today and they're, like, you know, this would be a problem but she's just not very likeable. And she says, So, you know, the way this has unfolded you've made it all about yourself. And I was like, Well, that's exactly what I'm not trying to do, but everybody else is afraid to talk and are, you know, uncomfortable. And I ended that conversation, and I called her back. I was like, Tina, I hope that at the end of that conversation you said to that person whether you and I like this person or not is irrelevant. The behavior, it's against policy and it's inappropriate. Like, it shouldn't be -- whether or not this merits a response should not be based on whether or not I'm likeable. And that is something that I have heard a lot from leadership, that I am unlikable, that I'm disliked, that I'm unfriendly, grandstanding, media hungry."

102. In her formal complaint against former Senator Kruse, Senator Steiner Hayward wrote:

"My goal is simply to get him to stop touching me inappropriately, which he has persisted in doing despite my ongoing statements to him that I do not want him to touch me in any way other than a professional handshake...[beginning in March 2017] I would remind him that I did not want him to touch me in those ways, and he would back off for a week or two, and then the cycle would begin again...I ultimately decided to file a formal complaint because of Senator Kruse's repeated denials of inappropriate behavior. *I know that I am not the only legislator to have experienced unwanted physical contact, and believe that there are women staff members and lobbyists who have also been subjected to inappropriate behavior by Senator Kruse.* Given that *he persisted in this behavior despite explicit warnings from Senate leadership, legislative counsel, and Human Resources;* that he continues to deny doing anything wrong; and that he refused to even acknowledge that I had the right to determine what I considered appropriate physical interactions, I do not have any choice other than to file a formal complaint...[G]iven his continued behavior despite official warnings and clear statements from those directly affected by it, and his lack of understanding of my discomfort, I am doubtful that he can make a permanent change in this behavior." (Emphasis added.)

103. Under the previous version of the Legislative Personnel Rule 27, the description of the formal complaint process contained a subsection that the special committee on conduct may recommend "[a] finding that the complaint is

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Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

frivolous or without merit. A finding that the complaint is frivolous or without merit may include recommended *sanctions against the complainant.*" (Emphasis added.)

104. In a May 26, 2015, document provided by Respondents that appears to be written by Ms. Christopher regarding Employee B's complaint, Ms. Christopher writes "I advised [Employee B] to contact Senator Steiner-Hayward [sic]; [REDACTED] (Sen. Steiner-Hayward [sic]); [sic] [REDACTED] (Sen. Shields); [REDACTED] (Sen. Hass) to inform them that the concern was being addressed and that *no further conversation between them or others regarding the concern should take place.*" (Emphasis added.) The document also states, "I advised [Employee B] of the potential of a retaliation claim should" although that sentence is not completed.
105. In an April 17, 2015, email, from Ms. Christopher to Mr. Johnson and a staff attorney at Legislative Counsel, regarding an amendment to the Findings and Recommendation into Employee A's allegations, Ms. Christopher states that only Mr. Johnson, Employee A, and the subject of her complaint will get a copy of the amended Findings and Recommendation. The email states that the legislators the subject of the complaint worked for "did not receive the original because Dexter was going to talk to them and assure them that no action needed to be taken on their part as an employer. They can request a copy at any time. Dexter and I determined not to offer it up to them pro-actively, thinking they could take action, based on the complaint, against [the subject of the complaint] that could be seen as retaliatory action by the employer."
106. In a March 31, 2015, document provided by Respondents, from Ms. Christopher to the subject of Employee A's complaint, it describes Respondent's duties under Rule 27 for the "Workplace Harassment Complaint." This includes the statement, "*Facts and recommendations must be provided* to the appointing authority ([two legislators the person complained about worked for]) of the person who is the subject of the complaint within 10 days of receipt of the facts and recommendations." (Emphasis added.) Additionally, the document states that the appointing authority of the person who is the subject of the complaint "[m]ust act on the recommendations in the report as soon as is practicable to act" and "[m]ay impose sanctions, including reprimand, implementation of a work plan, suspension or termination, or may take no further action."
107. At interview, BOLI asked Ms. Christopher if, after first learning about Senator Gelser's allegations against Senator Kruse, she considered the possibility that if he was allegedly harassing other legislators, that there might also be concerns with other employees or people visiting the capitol. Ms. Christopher answered: "We did not in '16."

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

108. In her interview with Ms. Rubanoff, Betsy Imholt stated:
- a. While discussing January/February 2017 and the start of the session in February, "We pull [Kruse] off of one of his important assignments, actually....And that was a, um, that was because of Senator Courtney's frustration with his unwillingness to comply with the smoking, not smoking in his office."
 - b. "This is actually something though that I'm very concerned about with the whole status of everything is that people were brought into an investigation without them, you know asked to be brought, you know they were asked to participate in an investigation, the informal complaint process investigation. Um, these weren't people that came forward. They were people that were proactively requested to participate. And I worry about their confidentiality. *And, um, again in the smoking situation we had employees come forward and complain about the smoking and then, um, we failed to protect their confidentiality and their names were in the newspaper as complaining against Senator Kruse's smoking and that was horrible for those employees.* And that I fear that on this situation because they did not come forward. They were asked to participate. They did...I don't know that some of those folks want to be party to the stuff that's going on in the news. Or that want to be, I don't know that they all want to be called, um, you know, as filing a complaint because that really wasn't what they have done. I mean I think from what I understand, they participated in this investigation and provided information but I feel like they're a bit being strung out there as, um, as red meat a bit and *I fear that they are not all of one like mind*, is my guess, and at the end of the day what we have to have is a process where people can continue to come forward. *This has been hard enough for two senators to come forward. Which I will remind you, that in the informal process they didn't even really, they didn't even come forward...we're not really doing a very good job of getting people to do these informal complaints.* We're not. And I really worry at the end of this it will be much worse if we're not really respectful of how and what people are actually, um, providing."
109. Respondent provided a phone call entry from Lore Christopher with the subject "[REDACTED] Workplace Conduct- Kruse." This entry includes, "Dexter Johnson and I received a phone call from former Senator [REDACTED] regarding workplace conduct of Se. [sic] Kruse. He was the Vice Chair of the Education Committee during 2003-2007 with Senator [REDACTED]. Two sessions, not sure which two...*She did not want to make an enemy of him and needed republican support for her policy measures.* 'He always had a "sloppy arm" around you. He was up-close and speaking in your face. When he whispers in your ear, he gets in your hair, ear and touches your skin. Her name for him was 'goober-slobbers'...*She is most concerned for younger women working with Kruse. Worried about the age difference and power differential. She has*

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

witnessed many young women attending events with their [sic] older bosses who were members. Interns on the arms of members." (Emphasis added.)

110. Respondent provided a document that includes handwritten notes that state "Gomberg" at the top and:

"Early Dec: [REDACTED] raised concerns about D. Gomberg making her feel uncomfortable due to physical contact such as rubbing her shoulders or trying to give her a hug...Mid Dec: Discussed the concerns raised with Dexter, head legislative counsel, avoiding names but providing the facts as they had been reported, and providing information that past concerns had been raised. *Dexter concluded that this was not harassment and could be dealt with internally.* Jan 12th: Speaker meets with D. Gomberg one on one. Tells him his behavior is not acceptable and he needs to change. Required him to come back and report to her w/ a plan to get professional help." (Emphasis added.)

111. Respondent provided a document that includes handwritten notes that state "[REDACTED] 6/25/13" at the top.

- a. This document includes under a header, "[REDACTED]," "'Where do I line up for the birthday spankings'? Saw she wasn't ok, but didn't back off, followed up w/ [REDACTED] to clarify about birthday spankings. Another incident right after Kenneimer, saw Gomberg rub [REDACTED]'s shoulders."
- b. This document includes, "'Left her lucrative career as a stripper/pole dancer and heading back to horse wrangling.' To [REDACTED] the intern re: courtesies overheard in outer office."

112. Respondent provided a document that includes handwritten notes that state "[REDACTED] 6/20/13" at the top.

- a. This document includes under a header, "Attention toward other [female symbol] staffers," "[REDACTED] in Majority office," "[REDACTED] in McKeown's office," "[REDACTED] in Williamson's office," "[REDACTED] (Gomberg's office)."
- b. On a second page that appears to be part of the same document, under a header, "[REDACTED]" this document includes, "[REDACTED] makes inappropriate comments to and in front of women," "She's not comfortable talking to him about this." "*he's retaliatory- doesn't take pushback well,*" (Emphasis added.)

113. Respondent provided a document called "Speaker Kotek notes 2013" that includes handwritten notes, the first page of which says "Rep Gomberg 6/28/13" at the top.

- a. This document includes, "[i]nappropriate & unacceptable comments about women and to women (examples below) + touching reported by several

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Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

- individuals and corroborated by several individuals safer not to touch anyone....examples of ‘sexualized’ or gendered comments/actions: - saying a young woman should get ready for her ‘birthday spanking’ on her birthday –joking about introducing your intern on the floor as a ‘poll [sic] dancer & stripper’ –hands on women’s shoulders to give shoulder rub.”
- b. This document includes “your actions contribute to and create a hostile work environment for the women who work in this building.”
 - c. This document includes “ultimately, treat everyone with respect,” “cease behavior that’s creating a hostile work environment for women- staff & lobbyists.”
 - d. This document includes “not helpful for you if you discuss this conversation w/ people in this building. any retaliatory actions will not be tolerated- you will lose your committee assignments.” (Emphasis in original.)

114. Respondent provided a document titled, “[REDACTED] meeting.” The text of the document includes “May 18, 2017,” and “Met with [REDACTED]. [REDACTED] told me that he had been receiving many text messages from [REDACTED] on his personal cell phone... The text messages are of a personal nature, and [REDACTED] characterized the tenor of many of them as “crazy”. [REDACTED] says he does not respond to them, though he did send two or three messages early on. [REDACTED] says he has told [REDACTED] that he is not interested in a personal relationship with her, and he has not ever seen her outside of the office. [REDACTED] *does not want either Elspeth or me to take any action at this time. I told him that, based on his request, I would not.*” (Emphasis added.)

115. In interview with BOLI on September 12, 2018, Employee B described a call with Senator Steiner Hayward:

“[I]t was really disappointing because she said that I had put her in a really awkward position, and she wasn’t sure...if she was supposed to be talking to me about it, but didn’t really care. She said that I put her in a really awkward position because the complaint that the labor commissioner had served was against the entire legislative body, so including herself...she said, I’m not saying you’re lying or I’m not saying you’re not telling the truth, you know. Memory is a weird thing...or something like that.”

116. Dexter Johnson filed multiple complaints with the Oregon Health Authority (OHA) regarding former Senator Kruse’s smoking. These complaints include December 21, 2011, November 2, 2012, June 25, 2013, September 21, 2016, December 21, 2016. Additionally, Dexter Johnson, Lore Christopher, and Kevin Hayden met with OHA on March 9, 2016, and Mr. Johnson sent OHA a letter dated May 9, 2016, seeking civil penalty to be imposed on former Senator Kruse.

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

VII. Summary

"Substantial evidence" means proof that a reasonable person would accept as sufficient to support the allegations of the complaint. OAR 839-003-0005(15).

PUBLIC ACCOMMODATION

Respondents operate the Oregon State Capitol, a place of public accommodation as defined by ORS 659A.400, and are subject to ORS 659A.403, which provides that all persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodation, without any distinction, discrimination or restriction on account of sex.

This incident of sexual assault of a lobbyist working in the Capitol by Senator Kruse occurred in the Governor's Office at an official state function that the lobbyist was attending as part of her work, just before the Governor entered the room. This is a violation of the public accommodation law. Respondents knew of Senator Kruse's conduct and had taken no preventive or corrective action in response to the many credible reports, and taped evidence, of his inappropriate sexual behavior. Respondents allowed the circumstances and behavior that led to this denial of full and equal accommodations, advantages, facilities and privileges of the State Capitol, including bodily integrity and safety, to a professional woman both working in the Capitol and an invited attendee at a ceremony in the Governor's Office.

There is substantial evidence that Senator Kruse's conduct was sufficiently pervasive and well-known that Respondents' failure to prevent his conduct resulted in denial of full and equal accommodations, advantages, facilities and privileges of the State Capitol for female lobbyists and visiting members of the public. The fact that claims of Representative Hernandez ranking female lobbyists based on their physical attributes were deemed "false" rather than unsubstantiated could reasonably be expected to discourage female lobbyists from coming forward with any similar concerns.

JURISDICTION OVER INTERNS

ORS 659A.350(1) states, "[a]n intern is considered to be in an employment relationship with an employer for the purposes of the employee protections under ORS 659A.030, 659A.082, 659A.109, 659A.112, 659A.136, 659A.142, 659A.199, 659A.230, 659A.233, 659A.236, 659A.290, 659A.300, 659A.303, 659A.306 and 659A.315.

ORS 659A.350(3) states that an intern is a person who performs work for an employer for the purpose of training if the employer is not committed to hire the person at the conclusion of the training period; the employer and person performing the work agree in writing that the person is not entitled to wages; and the work performed supplements

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Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

training given in an educational environment, provides experience for the person performing the work, does not displace regular employees, is performed under close supervision of existing staff, and provides no immediate advantage to the employer providing the training and may occasionally impede the operations of the employer.

OAR 839-005-0003(10)(e) incorporates the definition of intern in ORS 659A.350 and states “Intern” includes any person meeting the description set forth in this rule regardless of the title of the person’s position or whether they are currently enrolled in an education or training program.” (Emphasis added.)

The record reflects that both Students A and B were identified by staff and legislative members as interns and were both law students enrolled in an education program at the relevant time. The record reflects that both Students A and B meet the statutory description of intern and are, therefore, considered to have been in an employment relationship with Respondents.

SEXUAL HARASSMENT IN EMPLOYMENT

ORS 659A.030(1)(b) states, in relevant part, that it is an unlawful employment practice for an employer to discriminate against an individual in “terms, conditions or privileges of employment” because of that individual’s sex.

Sexual harassment in employment includes unwelcome sexual advances or other conduct when it is directed toward someone because of their sex and submission to that conduct or rejection of it is made either explicitly or implicitly a term or condition of employment and unwelcome verbal or physical conduct “that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.” OAR 839-005-0030(1).

Sexual harassment is sufficiently severe or pervasive to create a hostile work environment if “a reasonable person in the circumstances of the complaining individual would so perceive it.” OAR 839-005-0030(2).

An employer is liable for harassment if the employer knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. An employer should have known of the harassment unless the employer can demonstrate that the employer exercised “reasonable care to prevent and promptly correct” sexually harassing conduct and the complainant “unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.” OAR 839-005-0030.

ORS 659A.0301(1)(g) states that it is an unlawful employment practice for “any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so.”

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

SUBSTANTIAL EVIDENCE OF SEXUAL HARASSMENT

The record reflects numerous instances of unwelcome conduct toward persons because of their sex. This includes the conduct toward Senators Gelser and Steiner Hayward by former Senator Kruse, going at least as far back as 2011 for Senator Gelser and 2015 for Senator Steiner Hayward. The record includes allegations against Representative David Gomberg that were reported at the latest in 2013; allegations by Employee A made against a male intern in 2015; allegations by Employee B made against Robin Maxey (and subsequently echoed by others in comments to Senator Gelser), the Communications Director in the Office of the Senate President; and allegations of conduct by former Senator Kruse toward two interns, Students A and B, mostly during 2017. All of these allegations involved unwelcome verbal or physical conduct of a sexual nature.

The record reflects, including from findings in Ms. Rubanoff's report, numerous other women were subjected to unwelcome conduct of a sexual nature by former Senator Kruse that made them feel uncomfortable. This includes one Democratic Senator who recounted an incident during a break in the 2017 harassment training.

The record reflects that men were treated differently by former Senator Kruse. Ms. Rubanoff's report describes some invasion of personal space and close talking with men, however, her findings do not include allegations to the same extent of hugging or touching men or sexual or gendered comments equivalent to "sexy" or "little girl."

Ms. Rubanoff's report states that the female staff members interviewed stated that they were uncomfortable but did not consider the conduct to be "sexually inappropriate." However, the report does not contain findings that the amount and extent of former Senator Kruse's conduct toward these and other women was commensurate with his conduct towards men and, therefore, this conduct is unwelcome conduct directed at these women because of their sex.

RESPONDENTS KNEW OR SHOULD HAVE KNOWN

The record reflects that there were "jokes" and comments that former Senator Kruse must have gone out for a cigarette break during the sexual harassment training. In interview with BOLI, Student B described an after-work event where Students A and B described former Senator Kruse's conduct and the Chiefs of Staff present said they had heard that before and Student B felt former Senator Kruse's conduct was accepted. The record reflects other employees' experiences that inappropriate jokes and unwanted touching were prevalent and known occurrences.

Ms. Rubanoff's report states that one of the Democratic Senators "just accepted [Kruse's conduct] over the years." The record reflects that multiple Members felt that former Senator Kruse was a good political ally and did not want to alienate him or feared appearing too partisan or causing a disruption if they reported concerns.

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

In “Notes from HR interviews with witnesses” provided by Respondent, notes of an interview with Student B on October 31, 2017, include that “Other staffers told her he was on a ‘smoke break’ during sex harassment training[.] Inappropriate behavior every time she came to work- felt it was part of her job to tolerate it...People knew and didn’t do anything.” In notes provided of an interview with an employee of the Senate Judiciary Committee, on October 30, 2017, the notes describe a time where former Senator Kruse hugged the employee and kissed her on the cheek and the employee “explained she felt ‘uncomfortable’...She further described Senator Kruse’s conduct as overly-friendly and that it was a regular known occurrence to receive a hug from Kruse.”

In their position statement, Respondents point to the fact that they have conducted regular harassment trainings, but the record reflects that many employees noted that people do not take the harassment training seriously and that examples from the presentation may become the basis of inappropriate jokes.

In interview with BOLI, Student B described that multiple people at the Capitol have told her that her career is over and that she is a “traitor” for coming forward with her allegations. In interview with BOLI, Employee B described a call with Senator Steiner Hayward where Senator Steiner Hayward told Employee B that she had put the Senator in an awkward position because of her involvement in this BOLI complaint.

The record reflects a fear to alienate or upset people whose vote or support might be needed in the future and a fear to appear too partisan or disloyal.

The record reflects there was extensive unwelcome conduct toward employees working for Respondents which was either overtly sexual or was directed at them because of their sex and submission to that conduct was explicitly or implicitly a term or condition of employment. The record reflects that this conduct was carried out by multiple actors over a number of years. The record reflects that there was unwelcome verbal or physical conduct that was sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

If an employer knew of sexual harassment occurring, the employer must have taken immediate and appropriate corrective action to avoid liability. If an employer should have known of sexual harassment occurring, the employer must have taken reasonable care to prevent and promptly correct sexual harassment, and complaining individuals must have unreasonably failed to take advantage of preventative or corrective opportunities.

The record reflects that Speaker Kotek and Legislative Counsel Dexter Johnson were aware of the allegations against Representative Gomberg at least in 2013.

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

The record reflects that Employee B notified Lore Christopher, Dexter Johnson, and Betsy Imholt of her allegations against Mr. Maxey at least by May 21, 2015.

The record reflects that Employee A notified Respondents of her allegations at least by March 4, 2015.

Senator Gelser filed two informal complaints about former Senator Kruse's conduct, one in early 2016 and one in October 2017. Senators Gelser and Steiner Hayward filed formal complaints against former Senator Kruse in November 2017. Outside of these official reports, at least some of former Senator Kruse's conduct against Senator Gelser occurred in front of other people. Someone intervened in a 2011 incident, Senator Chris Edwards intervened in a 2016 incident, and Senator Burdick intervened in 2017. Additionally, Senator Gelser stated that she spoke with her Committee Chairs in 2015 about not being seated next to former Senator Kruse and, for the committee she was Chair of, she asked LPRO Analyst Cheyenne Ross to not have former Senator Kruse seated next to any women, if possible.

The record reflects that Senate President Courtney's Chief of Staff Betsy Imholt knew about some of Senator Kruse's unwelcome conduct prior to the March 2016 caucus meeting where Senators Gelser and Steiner Hayward brought up concerns about former Senator Kruse.

Student A's allegations include that former Senator Kruse's 2017 comments to Student A calling her "little girl" occurred in front of other people, including other legislators.

The record reflects that Senator Steiner Hayward was a "designated intermediary" for the 2013 and 2015 session and people went to her on two occasions and they did not involve former Senator Kruse. In a declaration, Senator Steiner Hayward stated she was an intermediary for close to four years and was "a designated individual who others could turn to for confidential conversations about uncomfortable experiences they may have had in relation to other employees or Legislators." Additionally, in the declaration, she states that people would approach her *after* she completed her role as an intermediary "to occasionally express concerns about behavior of other legislators or staff."

The record reflects that Respondents' processes for addressing harassment complaints are not well understood, as evidenced by multiple witnesses demonstrating inconsistent understandings about the existence or status of the "intermediary" designations.

Ms. Rubanoff's report contains findings that *a male staff member in the Senate Republican caucus office said two female staff members reported concerns to him about former Senator Kruse in 2016* but the concerns did not involve physical touching. In a witness statement attributed to Senator Knopp, he stated he had seen former Senator Kruse put his arm around Senator Gelser, he believes it continued in 2017, and it did not appear that it was welcome. In this statement, in response to a question about whether

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

any female member or staffer expressed she was uncomfortable with physical contact by Senator Kruse, Senator Knopp said Senator Monnes Anderson “expressed some discomfort” and *a staffer in the Republican office did as well.*

The record reflects that, at least during the period of 2013-2015, Respondents received reports of sexual harassment-related allegations against at least three different people. For the allegations against Representative Gomberg specifically, these allegations involve multiple victims who were working in multiple offices at the Capitol. Respondents knew or should have known by 2015 at the latest, that there were many allegations of sexual harassment in the Capitol involving multiple actors.

RESPONDENTS FAILED TO TAKE IMMEDIATE AND APPROPRIATE CORRECTIVE ACTION

The record reflects that Respondents knew of the conduct by former Senator Kruse at least by 2016, by the time of Senator Gelser’s first informal complaint. However, the record also reflects that Respondents should have known of the conduct by former Senator Kruse years prior due to the prevalence of his conduct to multiple people and in front of multiple people. The record supporting this includes the allegations by Students A and B that people would “joke” or comment about former Senator Kruse missing the harassment training, that certain offices had protocols for interacting with former Senator Kruse, and that people in many levels of leadership and administration also experienced hugs or other conduct from former Senator Kruse.

In the documents provided by Respondents regarding allegations against Representative Gomberg, the notes indicate Speaker Kotek met with Representative Gomberg in January of an undated year following up from December allegations but then the notes indicate another meeting in June 2013. It is unclear from the documents provided if the conduct did not stop or new reports were made and that was why two meetings were needed or if any investigation took the full length of time between.

The documented notes of a meeting with [REDACTED] indicate that [REDACTED] reported unwanted personal contact and that he asked for no action to be taken. If the person [REDACTED] met with had supervisory authority, they would be required to take appropriate corrective action, if needed, in response to reported allegations and cannot fail to take action because they are asked to.

The record reflects that, despite being explicitly told to change his conduct in 2016, former Senator Kruse continued his inappropriate conduct toward Senator Gelser and began a pattern of inappropriate conduct toward new victims, including Students A and B and the lobbyist at the event at the Governor’s office.

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

The record reflects that former Senator Kruse was explicitly told to keep an arms' length distance from women in the workplace but that he did not change his behavior because he did not know who complained and was not going to "back away" from everyone.

The record reflects that, in October 2017, former Senator Kruse told Senator Steiner Hayward that he did not see why her concerns were a big deal.

The record reflects that Ms. Imholt believed that if Senator Steiner Hayward was unable to get former Senator Kruse to stop his conduct, then she did not know how anyone else could.

In her formal complaint against former Senator Kruse, Senator Steiner Hayward wrote that she wanted former Senator Kruse to stop touching her inappropriately which he had continued to do despite her telling him not to. In her formal complaint, Senator Steiner Hayward described that she was not the only victim of his conduct, that he has continued the behavior despite multiple warnings from leadership, and that she was "doubtful" that former Senator Kruse could make a permanent change in his behavior.

In her testimony before the Oregon Law Commission, Senator Gelser said she did not know the point of reporting conduct occurring after her complaint because former Senator Kruse's conduct did not change and there were other things she could spend energy on rather than complaining about the same thing and getting the same result.

Similarly, Senator Gelser's November 2017 formal complaint states she did not immediately report ongoing concerns or the 2017 incidents because there was no change in former Senator Kruse's behavior following the prior intervention.

Additionally, in an interview with BOLI, Senator Gelser mentioned issues with former Representative Matt Wingard in 2011 including conduct that made her feel her physical safety was threatened. She stated that, in her experience in bringing up concerns about former Representative Wingard, she was not told about the complaint process and felt that something was wrong with her because she could not work with him.

In "[REDACTED] notes 2013," the December allegations against Representative Gomberg include a woman feeling "uncomfortable due to physical contact such as rubbing her shoulders or trying to give her a hug." However, the notes also state that "*Dexter concluded that this was not harassment and could be dealt with internally.*" In "Speaker Kotek notes 2013" regarding Representative Gomberg, the notes state that his actions "contribute to and create a hostile work environment for women who work in this building" including staff and lobbyists. This suggests either continuing conduct that was later deemed to rise to the level of a hostile work environment, a difference of opinion between Mr. Johnson and Speaker Kotek, or an effort to not address Representative Gomberg's harassing conduct through more formal channels.

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

The record includes credible testimony by a former female employee, who stated that Senate President Courtney caused her employment to end because she was dating a member of the legislature, while the record lacks evidence that Senate President Courtney attempted comparably forceful actions to prevent harassment by Senator Kruse.

The record reflects that Employee A and Employee B were advised by Ms. Christopher to not speak about their complaints, even at the conclusion of the investigations, because of the potential of a retaliation claim. Additionally, the record reflects Ms. Christopher and Mr. Johnson had a concern that the subject of Employee A's complaint could have a retaliation complaint, they did not follow their own processes for providing findings and recommendations to the appointing authority for a subject of a complaint, and they actively told the appointing authority that no action needed to be taken on their part even though Personnel Rule 27 allowed the appointing authority to take action.

The record reflects that former Senator Kruse did not cease his sexually harassing conduct after being explicitly instructed to do so.

The record suggests that Respondents, at least initially, took more serious steps to curb former Senator Kruse's smoking than they did to curb his sexual harassment. Additionally, the record reflects that repeated formal complaints with the Oregon Health Authority, among other actions, did not stop former Senator Kruse's behavior. It is unclear why Respondents thought less formal admonitions to former Senator Kruse to stop his sexually inappropriate behavior would be appropriate or corrective. The record reflects that people were resigned to the fact that former Senator Kruse would not change his conduct, both his smoking and his sexually-inappropriate behavior.

Respondents have repeatedly brought up concerns of confidentiality as a reason for challenging this complaint and the need for their responses. In her interview with Ms. Rubanoff, Ms. Imholt stated that Respondents failed to keep promises of confidentiality for people who complained about former Senator Kruse's smoking and she expressed concern for confidentiality in Ms. Rubanoff's investigation and expressed that Respondents were not good at getting people to report informal complaints.

The record reflects that, prior to 2016, people filing formal complaints could be subject to sanctions, depending on the outcome of their complaint. The record reflects that people reporting issues were told to not speak about their complaints and some were warned about the possibility of defamation or retaliation claims for doing so. The record suggests Respondents had a higher concern for people who had allegations brought against them rather than for people bringing forward complaints of inappropriate conduct they or others had experienced.

The record indicates that people have a fear of retaliation for coming forward. This is supported by the 2013 documents regarding Representative Gomberg and by evidence regarding Senator Gelser, the experience of Students A and B and others in 2017 as well

Civil Rights Division - Bureau of Labor and Industries

NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

as statements by multiple people about former Senator Kruse being an important political ally. The record reflects that people working for Respondents and at the Capitol do not have confidence in the processes in place to protect them. This is supported by evidence that people do not feel comfortable going to human resources, multiple people stating that examples from the sexual harassment training are used as a basis for inappropriate comments, that former Senator Kruse and others made comments about former Senator Kruse's attendance or lack thereof at the training, Ms. Imholt's statements that she has heard the training is not taken seriously, and Ms. Imholt's statements about the releasing of names of people who complained about former Senator Kruse's smoking after a promise of confidentiality.

The record reflects that Respondents' failure to take immediate and appropriate corrective action has sometimes been due to an acceptance of unwelcome conduct that is erroneously thought to not rise to the level of sex harassment, as supported by Ms. Imholt's descriptions of experiencing and knowing about unwelcome hugs from former Senator Kruse but stating that it is not something she would have filed a complaint about. The record reflects this inaction appears to be sometimes due to the stress of balancing multiple interests and erroneously placing other priorities over these duties, as supported by Senator Gelser's descriptions of President Courtney asking her to delay her complaint and expressing difficulty in responding to Senator Boquist, and discussions of authority to dictate former Senator Kruse's actions and that impact on his constituents, while not accounting for the impact on Senator Gelser or her constituents.

There is substantial evidence that Respondents failed to take immediate and appropriate corrective action, or in many cases any action, in response to complaints of incidents of sexual harassment that they knew or should have known about, in particular regarding former Senator Kruse but also with respect to other members of the assembly and individuals in the Capitol. The Civil Rights Division does not find evidence that Ms. Rubanoff intentionally misled Student A or Student B about their rights to pursue legal complaints of sex harassment, yet both students were left with similar impressions from their encounters with Ms. Rubanoff. The record reflects that Respondents consciously relied on processes that kept reports of harassment undocumented, including the use of "intermediary process" or informal complaints, which resulted in ineffective or non-responses and discouraged people from bringing forward complaints.

The Civil Rights Division has found substantial evidence that instances of sex harassment have occurred repeatedly in the State Capitol over a period of years, that Respondents either knew or should have known of the harassment, and that Respondents have failed to take immediate and appropriate corrective action to prevent harassment. Respondents are aware of the inherent chilling effect created by the power imbalances between legislators and those whose careers can be significantly hindered by Respondents. Respondents have compounded that chilling effect in multiple ways. After conducting an internal investigation of a claim regarding allegations that a Member ranked female lobbyists based on their physical attributes, Respondents declared their conclusion that the claim

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

was false. Respondents' Legislative Counsel has opined that "false" is synonymous with "unsubstantiated." While concluding that a claim is unsubstantiated recognizes the possibility the claim could nonetheless be true, or at least brought in good faith, declaring a claim to be false is to imply the claimant is lying. Similarly, until 2016, Respondents' personnel rules explicitly allowed for "sanctions" against a complainant whose complaint was found "frivolous or without merit." A culture where a victim who is unable to prove what happened to them can reasonably fear being called a liar, or being sanctioned, is an optimal environment for harassment.

Respondents should have known of the high probability that female employees or interns such as Student A and Student B would be vulnerable to the known sexually offensive conduct of Senator Kruse. Respondents' investigator reported that in the course of her investigation, one of Respondents' members intimidated her. Respondents possess a unique degree of influence and power. This power is a factor to be considered by anyone wanting to oppose sex harassment by any legislators or favored staff. But for Senator Gelser's willingness to raise these issues publicly, there is no reason to believe Respondents would be willing to do anything to change the status quo. As a result of her actions, Senator Gelser credibly describes being subject to retaliatory animus, including but not limited to Senate President Courtney yelling at her when she pointed out it was his job to enforce policy; Senator Winters telling her this was something to work out in the family and she just needed to learn how to deal with it; Senator Burdick telling her she wanted to grandstand, and Speaker Kotek telling her this was political and the problem was people don't like her. Other victims of sex harassment could reasonably be expected to observe all of the above, and conclude that the risk of reporting harassment is too great.

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Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

VIII. Determination

The Bureau of Labor and Industries, Civil Rights Division, finds SUBSTANTIAL EVIDENCE OF UNLAWFUL EMPLOYMENT PRACTICES based on sex (discrimination in terms and conditions of employment) in violation of ORS 659A.030 (1)(b) and OAR 839-005-0030.

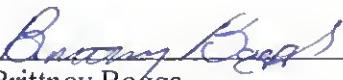
The Bureau of Labor and Industries, Civil Rights Division, finds SUBSTANTIAL EVIDENCE OF UNLAWFUL EMPLOYMENT PRACTICES based on sex (aiding or abetting discrimination in terms and conditions of employment) by Jeff Kruse, in violation of ORS 659A.030 (1)(g) and OAR 839-005-0030.

The Bureau of Labor and Industries, Civil Rights Division, finds SUBSTANTIAL EVIDENCE OF UNLAWFUL PRACTICES based on sex (denial of full and equal accommodations, advantages, facilities and privileges of a place of public accommodation without discrimination) in violation of ORS 659A.403.

The Bureau of Labor and Industries, Civil Rights Division, finds SUBSTANTIAL EVIDENCE OF UNLAWFUL PRACTICES based on sex (aiding or abetting denial of full and equal accommodations, advantages, facilities and privileges of a place of public accommodation without discrimination) by Jeff Kruse, in violation of ORS 659A.406.



Rosalia Radich
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